



**REQUEST FOR PROPOSAL**

**#NCG-9250001-0015**

**Asbestos Abatement – Staten Island**

**FOR WORK TO BE PERFORMED  
FOR  
GOVERNOR’S OFFICE OF STORM RECOVERY  
AND  
HOUSING TRUST FUND CORPORATION  
(GOSR/HTFC)**

**Work shall be performed under Subcontract with:**

**NorthStar Contracting Group, Inc.  
7 Penn Plaza  
370 7<sup>th</sup> Avenue – Suite 1803  
New York, NY 10001**

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## **BACKGROUND AND PURPOSE**

The Governor's office of Storm Recovery (GOSR) of the Housing Trust Fund Corporation (HTFC) seeks to procure services in connection with its administration of U.S Department of Housing and Urban Development (HUD) Community Block Grant-Disaster Recovery funds appropriated by the Disaster Relief Appropriations Act. 2013 (Pub L. 113-2). NorthStar Contracting Group Inc. (NCG) under contract with GOSR/HTFC will solicit and evaluate proposals for award for work to include utilities disconnection, demolition, and abatement of storm damaged residential properties. For more information on the background, offerors can go to the webpage located at <http://stormrecovery.ny.gov/>.

This request for proposals contains documents and procedures compliant with the Procurement and Contracts Guidelines of GOSR and in compliance with Section 2879a of the New York Public Authorities Law. The successful offerors shall be selected through submission of Technical, Administrative and Cost proposals. Selected offerors shall be under Subcontract to NCG and compliant with all NCG terms and conditions and terms and conditions of GOSR and HTFC as directed.

**There will not be a site visit. Offerors may view properties on their own or by appointment as described in Exhibit A – Statement of Work. Asbestos survey reports describing the work are available for download. Provide company contact and e-mail address to the NCG Construction Manager and Contract Manager indicated below and link to the files will be provided.**

All questions shall be submitted in writing to both the Construction Manager and Contract Manager noted below. All responses shall be in writing via amendment to the request for proposal.

John Hager, Construction Manager  
[jhager@northstar.com](mailto:jhager@northstar.com)

Danny Lavergne, Contract Manager  
[dlavergne@northstar.com](mailto:dlavergne@northstar.com)

All proposals shall be submitted on or before the date and time noted in Exhibit A - Statement of Work. If submitted electronically, send to the Construction Manager and Contract Manager at the e-mail addresses indicated above. If submitted in hard copy, proposals can be submitted to arrive at the offices of NCG no later than the date and time specified at the following address: **55 Progress Place, Jackson, New Jersey, 08527.**

## **PROPOSAL PROVISIONS- INFORMATION**

### **Diversity and Income Requirements**

GOSR through NCG is committed to awarding a contract(s) to firm(s) that will provide high-quality services and that is dedicated to diversity and to containing costs. We strongly encourage Offerors that are certified by New York State, or any other city or state, or the federal government, as minority- and/or woman- owned business enterprise ("M/WBEs"), as well as Offerors that are not yet certified, but have applied for certification, to submit responses to this RFP. All New York State certified M/WBE firms submitting proposals to this RFP should be registered as such with the New York State Department of Economic Development. For M/WBE firms that are not certified but have applied for certification, please provide evidence of filing, including filing date.

HTFC is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“M/WBE Regulations”) for all New York State funded HTFC contracts as defined therein, with a value in excess of \$25,000. HTFC strongly encourages teaming of M/WBE firms with majority firms and M/WBE firms with other M/WBE firms.

### **Small Business Diversity Participation**

Pursuant to New York State Executive Law Article 15-A (“Article 15-A”), GOSR recognizes its obligation to promote opportunities for maximum feasible participation of certified M/WBEs, and the employment of minority group members and women in the performance of all New York State funded GOSR contracts. Only offers from firms that are M/WBE certified or have applied for certification in New York State, or any other city or state, or the federal government, will be accepted in response to this RFP.

### **Business Participation Opportunities for MWBEs**

The directory of New York State Certified M/WBEs can be viewed at <http://www.esd.ny.gov/MWBE.html>. Offerors in need of further information or assistance relating to M/WBE partnering arrangements, can contact GOSR via email at [MWBE\\_EEOCreports@stormrecovery.ny.gov](mailto:MWBE_EEOCreports@stormrecovery.ny.gov).

### **Section 3 of the Housing & Urban Development Act of 1968**

In addition to the above diversity requirements, and pursuant to Section 3 of the Housing & Urban Development Act of 1968, GOSR is committed to ensuring that employment and other economic opportunities generated by HUD financial assistance shall, to the greatest extent feasible, and consistent with existing federal, state and local laws and regulations, be directed to low- and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons. A “Section 3 resident” is: 1) a public housing resident; or 2) a low, or very low income person residing in the metropolitan area or Non-metropolitan County where the Section 3 covered assistance is expended. A “Section 3 business concern” is a business that can provide evidence that they meet one of the following criteria: 1) 51% or more owned by Section 3 residents; or 2) at least 30% of its full time employees include persons that are currently Section 3 residents, or were Section 3 residents within three years of the date of first hire; or 3) provides evidence, as required, of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to business concerns that meet one of the preceding two qualifications. Further requirements for Section 3 contracts are detailed in Section 30 of Appendix I, “HUD General Provisions.”

### **Procurement Lobbying Provisions**

Pursuant to State Finance Law §§ 139-j and 139-k, this RFP includes and imposes certain restrictions on communications between GOSR/HTFC/NCG and Offerors during the solicitation process. An Offeror is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Subcontract (the restricted period) with GOSR or NCG staff other than NCG individuals noted to accept questions under this RFP, unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a).

GOSR and NCG employees also are required to obtain certain information when contacted during the restricted period and make a determination of responsibility of the Offeror pursuant to these two statutes. Certain findings of non-responsibility can result in the rejection for Subcontract award and in the event of two (2) findings within a four-year period, the offeror is debarred from obtaining governmental procurement contracts. Further information about these requirements can be found on the Office of General Services website at

<http://ogs.ny.gov/default.asp>

For all lobbying law contacts and inquiries, please contact:

Lobbying Contact Officer

Governor's Office of Storm Recovery

[GOSRProcurement@stormrecovery.ny.gov](mailto:GOSRProcurement@stormrecovery.ny.gov)

## **Conflicts of Interest**

Any subcontract awarded under this RFP will preclude the selected Offeror from representing before GOSR any offeror or grantee of GOSR other than those offerors or grantees who may be assigned under this subcontract during the period the Subcontract is in effect. The selected Offeror will be subject to the provisions on conflicts of interest set forth in section 74 of the New York State Public Officers Law.

In the event of real or apparent of conflicts of interest, GOSR/NCG reserves the right to impose additional conditions upon contractors, including signing of a certification attesting to no conflict of interest. GOSR/NCG reserves the right to cancel any subcontract awarded pursuant to this RFP with 30 days' notice in the event that the actual conflict of interest, or the appearance of such conflict, is not cured to GOSR's or NCG's satisfaction.

## **INSTRUCTIONS FOR PROPOSAL**

### **ARTICLE 1 DEFINITIONS**

**§ 1.1 Amendments.** The Amendments are written or graphic instruments issued by NCG prior to the execution of the Agreement that modify or interpret the Proposal Documents by additions, deletions, clarifications or corrections.

**§ 1.2 Subcontract Documents.** The Subcontract Documents consist of the Agreement between NCG and the Subcontractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and all Amendments issued prior to execution of the Agreement.

**§ 1.3 Reference Documents.** Reference Documents consist of other documents specifying architectural, structural, mechanical and electrical systems, and other elements of the Project for reference and information regarding other work on the premises. Unless otherwise indicated, Reference Documents are not Subcontract Documents.

**§ 1.4 Proposal.** A Proposal is a complete and properly executed written proposal to do the Work for the sums stipulated therein, submitted in accordance with the Proposal Documents.

**§ 1.5 Proposal Documents.** The Proposal Documents include the Proposal Requirements, the proposed Subcontract Documents and any Reference Documents.

**§ 1.6 Proposal Requirements.** The Proposal Requirements consist of the Invitation and Instructions for Proposal, supplementary instructions for Proposal and Proposal forms.

## **ARTICLE 2 PROPOSAL DOCUMENTS**

**§ 2.1** Subcontractors shall use complete sets of Proposal Documents in preparing Proposals. NCG assumes no responsibility for errors or misinterpretations resulting from the use of an incomplete set of Proposal Documents.

**§ 2.2** The Subcontractor shall carefully study and compare the Proposal Documents with other portions of the Project that relate to the Work for which the Proposal is submitted and shall examine the site and local conditions. The Subcontractor shall report to NCG any errors, inconsistencies or ambiguities discovered.

**§ 2.3** Interpretations, corrections and changes to the Proposal Documents will be made only by Amendment. Amendments will be transmitted or made available to all who are known by the issuing office to have received a complete set of Proposal Documents.

## **ARTICLE 3 PROCEDURES FOR PREPARATION OF PROPOSAL**

**§ 3.1** Proposals shall be submitted on the forms included with the Proposal Documents. The Subcontractor shall make no revisions to the Proposal forms. Each copy of the Proposal shall state the legal name of the Subcontractor, and if the Subcontractor is an entity, the Proposal shall state whether the entity is a corporation, partnership or other business association. Each copy of the Proposal shall be signed by the person or persons legally authorized to bind the Subcontractor to a contract. Costs of proposals shall be borne entirely by the offeror

Proposals shall be in three (3) separate parts. When submitted electronically, they shall include separate files for each part and one (1) file that contains all the parts combined. The following are general guidelines for the contents of each part of the proposal. More detailed information can be found in the section entitled “Evaluation Factors” and at Exhibit C – Proposal Submittal Checklist. Note that a copy of the completed checklist **SHALL BE SUBMITTED WITH THE PROPOSAL.**

Part one (1) is the administrative proposal. There is no limit on page count. The administrative proposal shall include a company introduction letter to include pertinent contacts for questions, persons authorized to commit the company, all labor and EEO attachments and forms **specifically noted** in the section entitled “Evaluation Factors” and at Exhibit C – Proposal Submittal Checklist and insurance and bonding documents.

Part two (2) is the technical proposal. The Technical Proposal will consist of completed documents describing the Subcontractor Technical Approach, Safety Performance and Past Project Performance.

Part three (3) shall be the cost proposal and will consist of the completed, Exhibit B – Proposal Pricing.

All offers and materials submitted shall become the property of NCG.

An offer may be withdrawn up to and including the date and time set for receipt of proposals by written request to NCG Construction Manager or Contract Manager at [jhager@NorthStar.com](mailto:jhager@NorthStar.com) or [dlavergne@NorthStar.com](mailto:dlavergne@NorthStar.com).

§ 3.2 The Subcontractor shall provide as part of the Proposal Part two (2), (1) a fully compliant and completed proposal containing all required information noted under “Evaluation Factors, Technical Proposal”, or (2) names of persons or entities/subcontractors (including those who are to furnish materials or equipment) proposed for the portions of the work, (technical proposal information shall be provided for all proposed teaming partners or subcontractors), and (3) if providing materials, a statement certifying that the Proposal contains no product or materials substitutions.

§ 3.3 All copies of the Proposal and any other documents required for submission with the Proposal shall be enclosed in a sealed, opaque envelope if mailed. NCG Preference is that proposals are submitted electronically. If mailed, the envelope shall be addressed to the party receiving the Proposal and shall be identified with the Project name, the Subcontractor’s name and address and, if applicable, the designated portion of the Work for which the Proposal is being submitted. If the Proposal is sent by mail, the sealed envelope shall be enclosed in a separate envelope with the notation “SEALED PROPOSAL ENCLOSED, DO NOT OPEN” on the face thereof. Proposals shall be deposited at the designated location prior to the time and date for receipt of Proposals. Proposals received after the time and date for receipt of Proposals will be returned unopened. The Subcontractor shall assume full responsibility for timely delivery at the location designated for receipt of Proposals. Other methods of transmission, including oral, telephonic, telegraphic, facsimile or other electronically transmitted Proposals, will not be considered unless requested in the invitation.

§ 3.4 A Proposal may not be modified, withdrawn or canceled by the Subcontractor during the stipulated time period after the time and date designated for the receipt of Proposals. Before the time and date designated for receipt of Proposals, a Subcontractor may withdraw or modify a submitted Proposal by providing written notice to the person or entity receiving Proposals. Any such modifications to Proposals shall be in writing and signed by the Subcontractor. Modifications shall be received, and the date and time stamped by the receiving party, on or before the date and time set for receipt of Proposals. A modification to a Proposal shall not reveal the amount of the original Proposal.

#### **ARTICLE 4 CONSIDERATION OF PROPOSALS**

NCG shall have the right to reject any or all Proposals. NCG shall have the right to waive informalities and irregularities in a Proposal received and to accept the Proposal that, in NCG’s judgment, is in NCG’s interests. NCG has the sole right to reject any proposals containing errors or omissions. Offerors are cautioned to review their proposals in their entirety to ensure compliance with this RFP.

NCG will examine all proposals that are received in a proper and timely manner to determine if they meet the proposal submission requirements. Proposals that are materially deficient in meeting the submission requirements or have omitted material documents, in the sole opinion of NCG, may be rejected. All proposals meeting the proposal submission requirements will be evaluated.

NCG will evaluate each proposal based on the “Best Value” concept. This means that the proposal that “optimizes quality, cost, and efficiency among responsive and responsible offerors” shall be selected for award (State Finance Law, Article 11, § 163).

NCG will determine which proposal best satisfies its requirements.

NCG reserves all rights with respect to the award. All proposals deemed to be responsive to the requirements of this procurement will be evaluated and scored for technical qualities and cost.

NCG will evaluate all proposals meeting the proposal submission requirements. NCG may request clarification of a proposal. The evaluation process will include separate technical and cost evaluations and will be conducted as set forth herein.

Upon review of proposals, NCG may, at its discretion, submit to Offerors written questions and requests for clarification relating to their proposals. If specific sections of the written proposal require clarification, NCG will identify the section(s) and information requested in writing. Offerors will be provided a reasonable period of time in which to submit written responses to NCG’s requests for clarification. Offerors should respond by the deadline stated in the correspondence.

In addition, NCG may use the proposal, information obtained through any interviews, and NCG’s own investigation of an Offeror’s qualifications, experience, ability, or financial standing, as well as any other material or information submitted by the Offeror in the course of evaluation and selection under this RFP. NCG reserves the right to contact other sources not necessarily identified in the proposal to obtain information. Other than to provide clarifying information as may be requested by NCG, no Offeror will be allowed to alter its proposal or add information.

NCG reserves the right to make award without discussions.

## **ARTICLE 5 POST-AWARD INFORMATION**

**§ 5.1** The Subcontractor shall be required to establish, to the satisfaction of NCG and the HTFC, the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Proposal Documents.

**§ 5.2** Prior to the execution of the Agreement, NCG will notify the Subcontractor in writing if NCG, after due investigation, has reasonable objection to a person or entity proposed by the Subcontractor, pursuant to Section 5.1. If NCG has reasonable objection to a proposed person or entity, the Subcontractor may, at the Subcontractor’s option, (1) withdraw the Proposal or (2) submit an acceptable substitute with or without an adjustment to cover the difference in cost occasioned by such substitution. NCG may then accept or reject the adjusted Proposal.

**§ 5.3** Persons and entities proposed by the Subcontractor and to whom NCG has made no reasonable objection must be used to perform the Work for which they were proposed and shall not be changed except with the written consent of NCG.

## **ARTICLE 6 FORM OF AGREEMENT BETWEEN NCG AND SUBCONTRACTOR**

Unless otherwise required in the Proposal Documents, the Agreement for the Work shall be NorthStar Contracting Group Inc. Subcontract document found as an attachment to this RFP.



## **EVALUATION FACTORS**

Part 1- Administrative Proposal Contents. Include completed forms and documents

1. Company introduction letter to include pertinent contacts for questions, and persons authorized to commit the company, legal status and years in business and incorporation along with letter from state showing company to be in good standing. Include address, emails and phone number to primary office or operations that would oversee any subcontract as a result of an award under this proposal.
2. Requirement of Legal Entities -Offerors that are corporations, partnerships, or any other legal entity, domestic or foreign, shall be properly registered to do business in the State of New York at the time of the submission of their responses to this RFP. Such Offerors shall attach a certificate of good standing from the New York Secretary of State to their Part 2 submission.
3. Evidentiary documentation of registration as New York State M/WBE.
4. Evidentiary documentation of Section 3 status of business.
5. Complete and include in the proposal a Vendor Responsibility Questionnaire, the form for which can be found at [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm). Select the questionnaire that best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other). Do not send the completed form to the Office of the State Comptroller (OSC) unless specifically requested.
6. Affirmation of Understanding Form -Complete and sign the Affirmation of Understanding and Agreement Pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b), attached hereto as Appendix A.
7. Completed Offeror Disclosure of Prior Non-Responsibility Determinations Form and Non-Collusive Bidding Certification -Required by Section 2878 of the Public Authorities Law as Appendix B.
8. General Federal Grant Requirements- Because the contract is being funded with federal funds, the contract shall be governed by certain federal terms and conditions for federal grants, such as the Office of Management and Budget's ("OMB") applicable circulars. Respondent shall provide a description of experience with such grant requirements and affirmatively represent and certify that the respondent shall adhere to any requirements of applicable federal requirements.
9. Certification that the Offeror represents that at the time of submission of its Proposal, Offeror possesses each license that it is required to hold under the terms of the RFP documents, as well as any other license(s) that it is required by Applicable Laws to hold in order to perform those services it anticipates it will be required to perform under the terms of any subsequent subcontract.
10. Representation that neither Offeror nor any person or entity associated or partnering with Offeror has been the subject of any adverse findings that would prevent GOSR from approving the selection of the offeror. Such adverse findings include, but are not limited to, the following: Negative findings from the New York State Inspector General, a federal Inspector General or from the U.S. Government Accountability Office, or from an Inspector General in another state. Pending or unresolved legal action from the U.S. Attorney General or from an attorney general in New York or another state Pending litigation with New York State, any other state, or a municipality located in New York or another state. Arson conviction or pending case. Harassment conviction or pending case. Local, State, Federal or private mortgage arrears, default, or foreclosure proceedings. In rem foreclosure. Sale of tax lien or substantial tax arrears. Fair Housing violations or current litigation. Defaults under any Federal, State or locally-sponsored program. A record of substantial building code violations or litigation against properties owned and/or

managed by Offeror or by any entity or individual that comprises Offeror. Past or pending voluntary or involuntary bankruptcy proceeding. Conviction for fraud, bribery, or grand larceny. Listing on the federal or state excluded parties lists.

11. Appendix III, Section 2: HTFC forms PROC-1, PROC-2 and PROC-8
12. Insurance and bonding documents. Bid Bonds are not required. Payment and Performance Bonds at 100% will be required. Successful proposers shall submit Payment and Performance Bonds within ten (10) calendar days after Notice of Award. A Certificate of Insurance must be submitted with proposal.

## Part 2-Technical Proposal

1. Safety performance, provide Experience Modifier Rate (EMR), most current and three (3) previous years and Total Recordable Injury Rate (TRIR) as recorded on OSHA 300 Logs for most current and three (3) previous years.
2. Past performance and experience on projects of similar size and complexity. Indicate whether projects were or were not performed within the proposed work area (county / borough). Provide 3 Names and contact information for these projects.
3. Approach to work scope to include methodology, technical expertise and proposed schedule. Offerors shall outline in sufficient detail their approach to the work efforts to show its complete understanding of the project scope and hazards. Discussion shall include, but not limited to the following: Schedule, work start, safety, deliverables, inspection and other related activities.
4. If Offeror will be subcontracting or partnering for any portion of the work, please also summarize the qualifications and experience of their relevant staff and attach any contracts or agreements pertaining to the proposal. Please provide at least three (3) references for the Offeror and for any partners or sub-contractors. Offerors are required to provide a reference for any disaster-related experience they list in this section. Each reference should include the name, title, company, address, phone number and email address of the reference, and a brief summary of the relationship between the reference and the Offeror.

## Part 3- Cost Proposal

1. Copy of proposal cost submission in accordance with attached form included with Exhibit B – Proposal Pricing

For evaluation purposes, Technical and Administrative factors when combined are more important than cost. NCG with the approval of GOSR shall make a best value selection determination based on the proposal information provided. Notwithstanding the scoring system set forth above, NCG, with GOSR concurrence, reserves the right to select a proposal that, in its sole judgment, is consistent with and responsive to the goals of the state's CDBG-DR Action Plan, irrespective of whether it is the apparent lowest-priced proposal, if it is determined by the Executive Director of GOSR and the Commissioner of NYS HCR to be in the best interests of the citizens of the State of New York.

## **EXHIBITS, APPENDICES AND ATTACHMENTS**

### **HUD General Provisions**

Because the contract is being funded with HUD funds, the contract shall be governed by certain general HUD terms and conditions, attached hereto as Appendix I.

### **Standard Clauses for Contracts with HTFC**

Because the ultimate contract will be between the offeror and NCG, which holds a contract with HTFC providing for the authority to solicit and award a subcontract for the work noted, the contract shall be governed by certain standard HTFC terms and conditions, attached hereto as noted.

### **List of Exhibits and Appendices**

Exhibit A - Statement of Work

Exhibit B - Proposal Pricing

Exhibit C - Proposal Submittal Checklist

Exhibit D - Service Contract Act Wage Determination- SCA WD 2005-2375 Rev 16 dated 7/14/15

Appendix A - Affirmation of Understanding and Agreement Pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b)

Appendix B - Offeror Disclosure of Prior Non-Responsibility Determinations

Appendix I - HUD General Provisions

Appendix II - Standard Clauses for Contracts with the Housing Trust Fund Corporation

Appendix III - Diversity Forms

Appendix IV – Construction Requirements and Procedures for Contracts with HTFC

Appendix V - NorthStar Contracting Group, Inc. Subcontract (Terms and Conditions)

## **EXHIBIT A STATEMENT OF WORK**

The purpose of this Statement of Work is to advise bidders of NorthStar Contracting Group's (NCG's) need for asbestos abatement services in the Oakwood Beach, Ocean Breeze and Graham Beach areas of Staten Island, New York and to outline conditions to qualified bidders for providing the services. The requested service is for the abatement of asbestos from housing units in preparation for the future demolition of the structures. The work to be performed must comply with all federal EPA and OSHA regulations as well as New York State (NY), and New York City (NYC) rules and regulations for asbestos abatement projects. The requested service is for performing all work required of an asbestos abatement firm performing this type of service on Staten Island from the initial proper notification of all required entities through completion of the abatement process and disposal of the resulting asbestos waste.

The selected abatement subcontractor must work with NCG personnel to complete all forms and make any and all notifications required of a building owner or agent needing abatement of asbestos containing materials (ACM) and potential asbestos containing materials (PACM) at residential properties in the Borough of Staten Island, as well as perform abatement of the properties following the requirements listed in the City of New York Rules and Regulations. Work will include preparation and submittal of notifications, plans, and permit applications, and payment of notification and application fees, in addition to the abatement and disposal of the asbestos.

The selected asbestos abatement subcontractor will be performing all tasks in a manner that will ensure NCG and its client the Housing Trust Fund Corporation (HTFC) being administered by the New York Governor's Office on Storm Recovery (NY GOSR) complies with all applicable regulations and requirements for conducting asbestos abatement activities in the Borough of Staten Island.

The work to be performed is time critical.

Pre-demolition asbestos abatement activities must be completed in a timely manner to allow for sufficient time for NCG to perform the demolition work and to perform post-demolition Site restoration activities. As such, timely performance of asbestos abatement related operations are imperative to NCG's maintaining of an aggressive demolition schedule.

The selected asbestos abatement subcontractor will need to work closely with NCG and the independent third party monitoring company to insure compliance with all applicable laws and regulations, timely execution of the abatement work, submittal of documents needed to obtain an abatement permit and to maintain the Project Record for each home, and supply of documents needed for submittal to the NYC Department of Environmental Protection (DEP) to obtain the Asbestos Project Completion.

### Site Description

There are nineteen (19) properties on Staten Island requiring asbestos abatement under this Request for Proposal (RFP). The nineteen properties are located in the Oakwood Beach, Ocean Breeze and Graham Beach sections of the Borough.

The structures requiring abatement range from single story to multi-story residential dwellings but also include basements, garages, and out buildings. The types of asbestos requiring abatement range from asbestos slate (transite) siding to roofing materials including asphalt shingles and tar paper. Other ACM listed on the ASRs include but are not limited to boiler insulation; pipe insulation; vinyl asbestos floor tile (VAT); ceramic floor and wall tile; foundation tar and foundation/basement water proofing; caulks, grouts, sealants and mastics; interior and exterior tar paper; facade tar joints and exterior brick caulk.

Locations on Staten Island where asbestos abatement services will be required include nine (9) properties in Oakwood Beach, six (6) properties in Ocean Breeze and four (4) in Graham Beach.

The Asbestos Survey Reports (ASRs) for the nineteen (19) properties are available for download as described in the RFP.

### Scope of Work

Prior to the commencement of abatement activities the selected subcontractor will be required to perform any and all pre-abatement activities designated by the asbestos rules and regulations of the City of New York, and the State of New York, for asbestos abatement projects and required of the building owner / agent of the owner, and the abatement company, including submittal of an asbestos abatement permit application and permit application fees, required notifications and associated fees, and the development and submittal of any required plans and documents needed to obtain the permit(s).

The selected abatement contractor will need to work closely with the independent third party monitoring subcontractor to insure pre-abatement activities required of both subcontractors are conducted in a timely fashion and time critical manner so as not to impact on NCG's post-abatement demolition schedule timeframes.

Pricing requested will be lump sum per property. It will be extremely important for each bidder to carefully consider all potential complications that could arise from performing this type of work in an expedited fashion, including allowance for possible repeat cleaning of a work area should post-abatement air sampling, or inspection of the work area by an independent third party monitoring firm, show that asbestos is still present above the acceptable criteria level. The selected subcontractor will base their lump sum per property bid price quotation at a minimum on:

- the requirements of the RFP,
- information in the ASRs provided,
- the cost of the containerization, offsite transportation, and disposal of asbestos wastes,
- permit applications and application processes
- abatement notification requirements,
- required document submittals,
- time frames involved in the application and notification processes,
- conditions observed during site visits
- their knowledge and experience in providing the services requested in the locations needing the service.

The information provided on the ASRs will be considered sufficient for bidders to determine the various size and types of abatements needed which will trigger notification requirements, permit application fees, plan submittals, types of asbestos requiring remediation/abatement, size and types of containment and equipment needed, and amount of waste to be disposed.

The selected subcontractor will be required to obtain all applicable permits and make all application and fee payments required for performing the services (cost to be included in the per property lump sum pricing provided). Anticipated permits and fees include those associated with asbestos abatement notification and obtaining the asbestos abatement permit.

Personnel utilized during the asbestos abatement activities must meet all NY, NYC, and federal EPA/OSHA training and medical surveillance requirements for personnel employed in the types of asbestos activities they will be performing. Documentation of compliance will need to be supplied to the NCG Health and Safety representative as well as submitted to the selected independent third party monitoring firm for

inclusion within the Project Records that are required to be maintained by them on Site during abatement and monitoring work at each affected property.

Since a Project Completion form from the DEP will be needed for each asbestos abatement project, and demolition activities are time critical, all activities to be performed by the selected asbestos abatement firm must be performed in an expedited manner. Final Reports from the independent third party asbestos abatement monitoring firm will be required to be submitted to NCG within 2 weeks of the completion of asbestos abatement activities as well as submittal of the Project Completion Notification listed in the NYC DEP Asbestos Control Program, rather than the 21 days provided for in the regulations. The selected abatement firm must therefore complete final disposal of the asbestos waste and provide the monitoring firm and NCG with the copies of all asbestos manifests and certificates of disposal from the final disposal facility(ies) for each property within 2 weeks of completion of each abatement. The selected abatement subcontractor must also provide the monitoring firm with any other documentation requested as needed to complete their final report to NCG on each property and to meet NYC DEP requirements for obtaining the Asbestos Project Completion Form.

The selected asbestos abatement subcontractor will be required to provide photo documentation of their entire asbestos abatement process to include pictures of the structure prior to abatement; areas of the structure requiring abatement, set-up of any containment devices; set-up and use of decon facilities; personal air sampling activities conducted for their own personnel; and post abatement showing work areas clear of asbestos waste and that all containment and decon facilities have been removed. Copies of all photos, along with a copy of the abatement log maintained by the Asbestos Supervisor, will need to be submitted to NCG at the end of abatement activities at each property.

Prior to the performance of the abatement, the selected asbestos abatement subcontractor will need to generate a Site specific Health and Safety Plan (HASP) and Job Hazard Analysis (JHA), and upon approval of the HASP/JHA by the NCG Health and Safety (H&S) Department the selected abatement firm will have its personnel read and sign the HASP and agree to comply with all of its requirements prior to work taking place on Site. Asbestos abatement personnel working on the Site will need to attend a daily safety meeting to be conducted by the abatement subcontractor's Asbestos Supervisor, Project Manager, or Site Safety Officer at the beginning of each work day and supply documentation of the completion of that daily meeting to the NCG H&S Dept. representative assigned to the Site as well as to the Asbestos monitoring firm for inclusion in their Project Record.

The Daily Safety Meeting documentation to be provided to the monitor by the abatement subcontractor will need to include the names of all personnel attending, name of the Supervisor conducting the meeting, and the date the meeting occurred as well as subjects discussed. The daily meeting will include at a minimum the type of work to take place that day, the hazards associated with the tasks to be conducted, and any steps to be taken by Site personnel to control and alleviate the hazards.

Employees utilized in the abatement work must possess all training certification and asbestos certifications required for performing abatement activities prior to the start of abatement work. Copies of the abatement contractor's certification and training documents must be submitted to the monitoring firm for inclusion in the Project Record prior to work taking place and must have their certification documentation on hand while performing abatement activities on Site. The selected asbestos abatement services subcontractor will be responsible for conducting its own personal/personnel air monitoring.

The selected asbestos abatement subcontractor providing services under this RFP will be responsible for the removal and disposal of all asbestos waste by no later than three working days after notification of successful post clean-up air sampling results at each individual residential property as activities end at

that location. In addition they must perform all tasks associated with the transportation and offsite disposal of the waste including but not limited to, proper packaging, labeling, manifesting, and disposal of the asbestos, and providing of a Certificate of Disposal and copies of fully executed manifests from the final disposal facility to show the waste was properly disposed of. Copies of all shipping papers showing weight and amount of materials disposed of, location of disposal, and listing the disposal facility, must be given to the monitoring firm for inclusion in the Project Record as well as to the NCG Construction Manager or his designated representative at completion of disposal and also be attached to the invoice requesting payment for that service.

Because this work is time critical, NCG scheduling requirements must take precedence over the schedule of the selected abatement subcontractor. The producing of any Plans, documents/reports, manifests, certificates of disposal, etc. will need to be expedited as well. The selected abatement subcontractor must be prepared to have personnel dedicated to the project including enough personnel to cover multiple abatement activities if they are conducted concurrently. The lump sum per property bid price must be inclusive of any costs associated with the possibility of working in excess of 8 hours each day if required to maintain the required completion schedule. The completion of abatement activities on all 19 properties must be completed within 70 calendar days of award of the subcontract from notification through completion of final waste disposal.

Pricing must include the cost of all labor, equipment, supplies, and materials, administrative costs (both onsite and offsite), permit fees, plan design and submittal, offsite transportation and disposal of waste, employee expenses including any meals, lodging, travel, daily transportation to and from the Sites, misc. expenses, personal protective equipment (PPE) including disposable PPE, and any and all other costs that may be incurred in the performance of the abatement services requested as no costs will be approved outside of the line item pricing.

The selected abatement firm must also be prepared to be totally self-sufficient for the tasks they will be performing on Site and the cost of providing their own utilities (such as portable generators, water source, lighting, portable toilets, etc.) must be included within the lump sum pricing required for each property. Utilities to each property will have either been terminated by the building owner or will be in the process of being disconnected by NCG in preparation for future demolition of the structures.

The asbestos abatement subcontractor will perform or aid NCG and the independent third-party monitoring firm in performing any notification required of an abatement company and/or the building owner / agent of the owner to occupants in residences immediately adjacent to areas of the asbestos removal project where required, and to personnel on Site as well as non-asbestos personnel who may be conducting activities at the Site such as utility disconnects. Information provided in the notification shall include the asbestos abatement contractor name, project location and size, amount and type of ACM/PACM involved, the abatement procedure, dates of expected occurrence, and the Call Center number (311) for government information and services. Postings of this notification shall be in English and Spanish, and in a location and using font and letter sizing required by NYC asbestos rules. The notices shall be posted 7 calendar days prior to the start of the project and shall remain posted until clearance air monitoring is satisfactorily concluded.

Within 14 days of the completion of all steps set forth in the Asbestos Control Program's Asbestos Rules and Regulations, including successful clearance air monitoring, a project monitor's report must be submitted to DEP on a DEP-approved form by the selected monitoring firm. The abatement firm must aid the monitoring subcontractor in meeting this more stringent reporting requirement by timely submitting requested documents to the onsite monitor or through NCG. The asbestos abatement project will be

considered complete at each property upon receipt by NCG of the Project Completion Form from the NYC DEP.

### SCHEDULE

All quotations must be received no later than the date and time listed below and within the RFP. Quotations received after the deadline will be considered non-responsive. All information must be provided that is required by the Request for Proposal document package or the submitted bid will be considered nonconforming.

EVENT	DATE
Site Visits	TBD – Firms interested in performing this work must call or email a request to schedule a Site visit. Site walks must be on a weekday during the period of 7-20-16 thru 8-2-16.
Pre-proposal Conference (Call-In)	Wednesday July 27,2016 and Friday July 29, 2016. Times and call-in information TBD
Deadline for Questions (must be in writing)	Wednesday August 3, 2016, 4:00PM EDT
Receipt of Bid (Bid Due Date)	Wednesday August 10, 2016, 4:00PM EDT
Tentative Award	Friday August 12, 2016
Tentative Start Date (Notice to Proceed)	Within 10 calendar days after Tentative Award
Required Work Completion Date	Within 70 calendar days of Notice to Proceed

This RFP does not commit NCG to pay any costs incurred in the development or submission of the proposal, nor does it commit NCG to produce or subcontract for any goods or services. NCG reserves the right to make multiple awards and/or no award at all. NCG reserves the right to award a subcontract or purchase order without further discussion. Bidders are responsible for placing all questions as to perceived ambiguities or conflict in the Contract Documents, in writing, prior to bid. After award, NCG will interpret any such conflicts or ambiguities at its sole discretion.

### GENERAL CONDITIONS

- The Subcontractor will provide all necessary permits, labor, equipment, supplies and materials to accomplish the Scope of Work.
- Subcontractor shall ensure that all of its personnel and lower-tiered subcontractors are trained and qualified to conduct all task(s) they will perform.



- The Subcontractor shall provide NCG with a written report of all incidents concerning health and safety, and/or on the job injuries, and the corrective action taken on each within 24 hours of the incident.
- All work on Site is time critical. It is anticipated that award of this Bid will take place by August 5, 2016. The selected vendor will then be responsible for commencing Site work no later than 10 calendar days after award and completing all Site work within 70 calendar days of award. The selected vendor must be able to provide rush work in order to be considered for award and will need to complete onsite operations within the time frame requested to aid in insuring NCG can maintain the aggressive schedule necessary to complete all Site related demolition activities in a timely manner.
- Subcontractor shall commence work when directed by NCG and shall work continuously until completion of the Scope of Work, unless directed otherwise by NCG.
- Bidders are advised that ANY AND ALL pricing stipulations that conflict with the express requirements of the bid package will render the entire bid package to be deemed non-responsive. For example, the RFP states that pricing per each line item must be inclusive of all costs other than any applicable Federal, NY State, and local sales or use taxes. If the bidder responds that the unit prices do not include permit fees, overtime, meals and incidental expenses or that fuel surcharges and environmental fees may be applicable but are not included in the line item pricing, the bid will be deemed non-responsive.
- It is a violation of the rules and regulations of the State of New York and the City of New York Asbestos Rules and Regulations for an air monitoring firm to conduct air monitoring on an asbestos project where there is a business or personal relationship between the abatement contractor and the air monitoring firm. The selected abatement subcontractor must immediately inform the NCG Construction Manager of any potential conflict of interest, appearance of a conflict of interest or any personal relationship it or its personnel may have with the selected asbestos monitoring subcontractor once the name or names of the asbestos monitor(s) are disclosed.

**EXHIBIT B**  
**PROPOSAL PRICING**

Each bidder must provide pricing on the provided Proposal Pricing sheet (Exhibit B). Bids are to be quoted as unit rates. **Do not change the units on Exhibit B.** The bid price must be all-inclusive. The unit prices bid must include all labor, equipment, materials, and supplies necessary to perform the services as described. Pricing must also include all permit fees, application fees, notification fees, environmental fees and charges, personnel travel, lodging, meals, and incidental expenses, equipment maintenance and repairs (including vehicle tires), fuel surcharges, and any and all other charges necessary to perform the services requested. No additional charges shall be considered or allowed outside the line item lump sum pricing for each property without prior approval from the NCG Project/Construction Manager. You must estimate any additional costs you may incur performing this work at each location at the time of bid submittal and adjust your lump sum per property pricing accordingly.

NOTE – NCG is not tax exempt. It is up to each bidder to determine if the work to be performed is taxable and as such much make sure their pricing includes all applicable Federal, State, and Local taxes.

**If you cannot provide a price on a specific item, place N/A in total price. DO NOT leave blank.**

Item Number	Number	Street	Location		Unit	Price
1	711	Liberty Ave	Ocean Breeze	Staten Island, NY 10305	LS	\$_____
2	733	Liberty Ave	Ocean Breeze	Staten Island, NY 10305	LS	\$_____
3	735	Liberty Ave	Ocean Breeze	Staten Island, NY 10305	LS	\$_____
4	703	Oceanside Ave	Ocean Breeze	Staten Island, NY 10305	LS	\$_____
5	606	Quincy Ave	Ocean Breeze	Staten Island, NY 10305	LS	\$_____
6	750	Seaview Ave	Ocean Breeze	Staten Island, NY 10305	LS	\$_____
7	154	Aviston St	Oakwood Beach	Staten Island, NY 10306	LS	\$_____
8	156	Aviston St	Oakwood Beach	Staten Island, NY 10306	LS	\$_____
9	162	Dugdale St	Oakwood Beach	Staten Island, NY 10306	LS	\$_____
10	143	Dugdale St	Oakwood Beach	Staten Island, NY 10306	LS	\$_____
11	137	Dugdale St	Oakwood Beach	Staten Island, NY 10306	LS	\$_____

Item Number	Number	Street	Location		Unit	Price
12	500	Fairbanks Ave	Oakwood Beach	Staten Island, NY 10306	LS	\$_____
13	115	Foxbeach Ave	Oakwood Beach	Staten Island, NY 10306	LS	\$_____
14	79	Foxbeach Ave	Oakwood Beach	Staten Island, NY 10306	LS	\$_____
15	53	Tarlton St	Oakwood Beach	Staten Island, NY 10306	LS	\$_____
16	43	Baden Pl	Graham Beach	Staten Island, NY 10305	LS	\$_____
17	693	Seaver Ave	Graham Beach	Staten Island, NY 10305	LS	\$_____
18	12	Sioux St	Graham Beach	Staten Island, NY 10305	LS	\$_____
19	10	Sioux St	Graham Beach	Staten Island, NY 10305	LS	\$_____
					<b>Total</b>	\$_____

**EXHIBIT C**  
**PROPOSAL SUBMITTAL CHECKLIST**

**IMPORTANT- PLEASE READ CAREFULLY**

All submitted proposals shall at A MINIMUM contain all information and completed and signed forms noted in the evaluation factors for both the Administrative and Technical Proposal. Each offeror should review all items in detail that are noted under EVALUATION FACTORS and ensure they have provided information to be evaluated on each and every item. FAILURE to provide a complete proposal may cause your proposal to be rejected and not considered for award.

If you have any questions concerning the content and items list below, please contact NorthStar Contract Manager Danny Lavergne at (303) 596-6305. NorthStar cannot help you provide information or direct you on how to package your proposal, but we can answer questions concerning requirements for the evaluation factors.

Provide a completed copy of the following summarized checklist with your proposal verifying you have included information for review on each and every evaluation item. **REVIEW EACH ITEM DESCRIPTION IN EVALUATION FACTORS TO ENSURE ALL REQUESTED INFORMATION IS PROVIDED FOR REVIEW OF YOUR PROPOSAL.**

**Part 1- Administrative Proposal Contents.** Include completed forms and documents

1. Company introduction letter. - Check when completed.
2. Requirement of Legal Entities - Check when completed.
3. Evidentiary documentation of registration as New York State M/WBE, or registration in any other city or state, or the federal government, as a minority- and/or woman- owned business enterprise. Check when completed.
4. Vendor Responsibility Questionnaire - Check when completed.
5. (and item 10). Affirmation of Understanding Form - Complete and sign the Affirmation of Understanding and Agreement. - Check when completed.
6. Offeror Disclosure of Prior Non-Responsibility Determinations Form Complete. - Check when completed.
7. Statement of understanding of federal requirements. - Check when completed.
8. Certification that the Offeror represents that Offeror possesses required licenses. - Check when completed.
9. Statement of no adverse findings or debarment actions. - Check when completed.
10. (see item 5. above).

11. Complete and signed APPENDIX B - Offeror Disclosure of Prior Non-Responsibility Determinations. - Check when completed.
12. Complete all labor and EEO attachments and forms included as part of this RFP. - Check when completed.
13. Insurance certificate submittal and letter noting ability to secure bonding. - Check when completed.
14. Completed NON-COLLUSIVE BIDDING CERTIFICATION - Check when completed.
15. Completed Appendix III - Diversity Forms - Check when completed.

### **Part 2-Technical Proposal**

1. Safety performance, provide Experience Modifier Rate (EMR) and Total Recordable Injury Rate (TRIR) for most current and three (3) previous years. - Check when completed.
2. Past performance and experience on projects of similar size and complexity. - Check when completed.
3. Approach to work scope. - Check when completed.
4. Required information supplied if subcontracting or partnering any portion of the work. - Check when completed.

### **Part 3- Cost Proposal**

1. Copy of proposal cost submission. - Check when completed.

**NOTE – THIS CHECKLIST MUST BE SUBMITTED WITH YOUR PROPOSAL**

\*\*\*\*\* THIS WAGE DETERMINATION WAS REPLACED 03/15/2016 \*\*\*\*\*  
WD 05-2375 (Rev.-17) was first posted on www.wdol.gov on 01/05/2016  
\*\*\*\*\*

REGISTER OF WAGE DETERMINATIONS UNDER  
THE SERVICE CONTRACT ACT  
By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
WAGE AND HOUR DIVISION  
WASHINGTON D.C. 20210

Daniel W. Simms                      Division of  
Director                              Wage Determinations

Wage Determination No.: 2005-2375  
Revision No.: 17  
Date Of Revision: 12/29/2015

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.15 for calendar year 2016 applies to all contracts subject to the Service Contract Act for which the solicitation was issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2016. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

State: New York

Area: New York Counties of Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland, Westchester  
OCCUPATION NOTE:

Janitor: The rate for the Janitor occupation applies to Putnam, Rockland, and Westchester Counties only. See Wage Determination 1977-0225 for wage rates and fringe benefits for Bronx, Kings, New York, Queens, and Richmond Counties.

**\*\*Fringe Benefits Required Follow the Occupational Listing\*\***

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		15.11
01012 - Accounting Clerk II		19.61
01013 - Accounting Clerk III		21.89
01020 - Administrative Assistant		30.93
01040 - Court Reporter		21.64
01051 - Data Entry Operator I		14.71
01052 - Data Entry Operator II		16.05
01060 - Dispatcher, Motor Vehicle		25.79
01070 - Document Preparation Clerk		15.56
01090 - Duplicating Machine Operator		15.56
01111 - General Clerk I		14.82
01112 - General Clerk II		17.49
01113 - General Clerk III		18.82
01120 - Housing Referral Assistant		26.92
01141 - Messenger Courier		12.92
01191 - Order Clerk I		18.05
01192 - Order Clerk II		21.67
01261 - Personnel Assistant (Employment) I		18.96
01262 - Personnel Assistant (Employment) II		21.22
01263 - Personnel Assistant (Employment) III		23.66
01270 - Production Control Clerk		23.51
01280 - Receptionist		15.67
01290 - Rental Clerk		18.04
01300 - Scheduler, Maintenance		21.57
01311 - Secretary I		21.57

01312 - Secretary II	24.82
01313 - Secretary III	26.92
01320 - Service Order Dispatcher	20.50
01410 - Supply Technician	30.93
01420 - Survey Worker	21.64
01531 - Travel Clerk I	15.98
01532 - Travel Clerk II	17.31
01533 - Travel Clerk III	18.79
01611 - Word Processor I	17.62
01612 - Word Processor II	19.79
01613 - Word Processor III	22.13
05000 - Automotive Service Occupations	
05005 - Automobile Body Repairer, Fiberglass	28.29
05010 - Automotive Electrician	28.50
05040 - Automotive Glass Installer	27.31
05070 - Automotive Worker	27.31
05110 - Mobile Equipment Servicer	24.42
05130 - Motor Equipment Metal Mechanic	30.31
05160 - Motor Equipment Metal Worker	27.31
05190 - Motor Vehicle Mechanic	29.68
05220 - Motor Vehicle Mechanic Helper	23.15
05250 - Motor Vehicle Upholstery Worker	26.12
05280 - Motor Vehicle Wrecker	27.31
05310 - Painter, Automotive	28.50
05340 - Radiator Repair Specialist	27.31
05370 - Tire Repairer	18.22
05400 - Transmission Repair Specialist	29.68
07000 - Food Preparation And Service Occupations	
07010 - Baker	19.55
07041 - Cook I	17.97
07042 - Cook II	19.55
07070 - Dishwasher	14.67
07130 - Food Service Worker	14.67
07210 - Meat Cutter	19.55
07260 - Waiter/Waitress	15.50
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	21.14
09040 - Furniture Handler	16.07
09080 - Furniture Refinisher	21.14
09090 - Furniture Refinisher Helper	17.75
09110 - Furniture Repairer, Minor	19.44
09130 - Upholsterer	21.14
11000 - General Services And Support Occupations	
11030 - Cleaner, Vehicles	14.92
11060 - Elevator Operator	14.92
11090 - Gardener	18.74
11122 - Housekeeping Aide	15.70
11150 - Janitor	15.70
11210 - Laborer, Grounds Maintenance	15.89
11240 - Maid or Houseman	13.98
11260 - Pruner	14.75
11270 - Tractor Operator	18.02
11330 - Trail Maintenance Worker	15.89
11360 - Window Cleaner	16.95
12000 - Health Occupations	
12010 - Ambulance Driver	24.99
12011 - Breath Alcohol Technician	24.87
12012 - Certified Occupational Therapist Assistant	24.12
12015 - Certified Physical Therapist Assistant	22.28
12020 - Dental Assistant	16.75
12025 - Dental Hygienist	35.31
12030 - EKG Technician	28.65
12035 - Electroneurodiagnostic Technologist	28.65
12040 - Emergency Medical Technician	24.99
12071 - Licensed Practical Nurse I	21.76

12072 - Licensed Practical Nurse II	24.34
12073 - Licensed Practical Nurse III	24.48
12100 - Medical Assistant	16.66
12130 - Medical Laboratory Technician	20.63
12160 - Medical Record Clerk	18.00
12190 - Medical Record Technician	20.55
12195 - Medical Transcriptionist	19.01
12210 - Nuclear Medicine Technologist	36.93
12221 - Nursing Assistant I	12.37
12222 - Nursing Assistant II	14.72
12223 - Nursing Assistant III	15.82
12224 - Nursing Assistant IV	16.79
12235 - Optical Dispenser	24.64
12236 - Optical Technician	16.64
12250 - Pharmacy Technician	14.58
12280 - Phlebotomist	16.79
12305 - Radiologic Technologist	28.08
12311 - Registered Nurse I	32.76
12312 - Registered Nurse II	38.41
12313 - Registered Nurse II, Specialist	38.41
12314 - Registered Nurse III	49.39
12315 - Registered Nurse III, Anesthetist	49.39
12316 - Registered Nurse IV	59.22
12317 - Scheduler (Drug and Alcohol Testing)	26.17
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	27.03
13012 - Exhibits Specialist II	33.49
13013 - Exhibits Specialist III	40.95
13041 - Illustrator I	26.51
13042 - Illustrator II	32.31
13043 - Illustrator III	39.22
13047 - Librarian	37.25
13050 - Library Aide/Clerk	15.79
13054 - Library Information Technology Systems Administrator	32.65
13058 - Library Technician	25.62
13061 - Media Specialist I	23.57
13062 - Media Specialist II	26.35
13063 - Media Specialist III	29.39
13071 - Photographer I	21.29
13072 - Photographer II	24.10
13073 - Photographer III	32.88
13074 - Photographer IV	38.49
13075 - Photographer V	46.55
13110 - Video Teleconference Technician	24.33
14000 - Information Technology Occupations	
14041 - Computer Operator I	19.00
14042 - Computer Operator II	21.26
14043 - Computer Operator III	23.71
14044 - Computer Operator IV	26.94
14045 - Computer Operator V	29.17
14071 - Computer Programmer I	(see 1)
14072 - Computer Programmer II	(see 1)
14073 - Computer Programmer III	(see 1)
14074 - Computer Programmer IV	(see 1)
14101 - Computer Systems Analyst I	(see 1)
14102 - Computer Systems Analyst II	(see 1)
14103 - Computer Systems Analyst III	(see 1)
14150 - Peripheral Equipment Operator	19.00
14160 - Personal Computer Support Technician	26.94
15000 - Instructional Occupations	
15010 - Aircrew Training Devices Instructor (Non-Rated)	39.54
15020 - Aircrew Training Devices Instructor (Rated)	43.75
15030 - Air Crew Training Devices Instructor (Pilot)	52.46
15050 - Computer Based Training Specialist / Instructor	39.54



15060 - Educational Technologist	33.02
15070 - Flight Instructor (Pilot)	52.46
15080 - Graphic Artist	35.27
15090 - Technical Instructor	31.44
15095 - Technical Instructor/Course Developer	38.34
15110 - Test Proctor	25.30
15120 - Tutor	25.30
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations	
16010 - Assembler	11.62
16030 - Counter Attendant	11.62
16040 - Dry Cleaner	14.30
16070 - Finisher, Flatwork, Machine	11.62
16090 - Presser, Hand	11.62
16110 - Presser, Machine, Drycleaning	11.62
16130 - Presser, Machine, Shirts	11.62
16160 - Presser, Machine, Wearing Apparel, Laundry	11.62
16190 - Sewing Machine Operator	15.19
16220 - Tailor	16.04
16250 - Washer, Machine	12.60
19000 - Machine Tool Operation And Repair Occupations	
19010 - Machine-Tool Operator (Tool Room)	20.89
19040 - Tool And Die Maker	24.21
21000 - Materials Handling And Packing Occupations	
21020 - Forklift Operator	16.96
21030 - Material Coordinator	23.51
21040 - Material Expediter	23.51
21050 - Material Handling Laborer	16.41
21071 - Order Filler	15.58
21080 - Production Line Worker (Food Processing)	16.96
21110 - Shipping Packer	15.28
21130 - Shipping/Receiving Clerk	15.28
21140 - Store Worker I	15.06
21150 - Stock Clerk	18.88
21210 - Tools And Parts Attendant	16.96
21410 - Warehouse Specialist	16.96
23000 - Mechanics And Maintenance And Repair Occupations	
23010 - Aerospace Structural Welder	29.79
23021 - Aircraft Mechanic I	27.11
23022 - Aircraft Mechanic II	29.58
23023 - Aircraft Mechanic III	30.66
23040 - Aircraft Mechanic Helper	21.89
23050 - Aircraft, Painter	24.18
23060 - Aircraft Servicer	23.97
23080 - Aircraft Worker	25.01
23110 - Appliance Mechanic	21.38
23120 - Bicycle Repairer	17.13
23125 - Cable Splicer	36.53
23130 - Carpenter, Maintenance	29.89
23140 - Carpet Layer	27.98
23160 - Electrician, Maintenance	37.18
23181 - Electronics Technician Maintenance I	24.19
23182 - Electronics Technician Maintenance II	29.17
23183 - Electronics Technician Maintenance III	31.14
23260 - Fabric Worker	28.00
23290 - Fire Alarm System Mechanic	21.67
23310 - Fire Extinguisher Repairer	22.51
23311 - Fuel Distribution System Mechanic	29.94
23312 - Fuel Distribution System Operator	27.20
23370 - General Maintenance Worker	24.67
23380 - Ground Support Equipment Mechanic	27.11
23381 - Ground Support Equipment Servicer	23.97
23382 - Ground Support Equipment Worker	25.01
23391 - Gunsmith I	22.51
23392 - Gunsmith II	25.12
23393 - Gunsmith III	27.25

23410 - Heating, Ventilation And Air-Conditioning Mechanic	26.97
23411 - Heating, Ventilation And Air Contditioning Mechanic (Research Facility)	28.93
23430 - Heavy Equipment Mechanic	26.10
23440 - Heavy Equipment Operator	34.38
23460 - Instrument Mechanic	30.86
23465 - Laboratory/Shelter Mechanic	26.21
23470 - Laborer	15.95
23510 - Locksmith	20.70
23530 - Machinery Maintenance Mechanic	23.95
23550 - Machinist, Maintenance	20.81
23580 - Maintenance Trades Helper	16.90
23591 - Metrology Technician I	30.86
23592 - Metrology Technician II	33.34
23593 - Metrology Technician III	34.56
23640 - Millwright	31.22
23710 - Office Appliance Repairer	22.95
23760 - Painter, Maintenance	25.47
23790 - Pipefitter, Maintenance	32.88
23810 - Plumber, Maintenance	32.93
23820 - Pneudraulic Systems Mechanic	27.25
23850 - Rigger	24.36
23870 - Scale Mechanic	25.12
23890 - Sheet-Metal Worker, Maintenance	30.55
23910 - Small Engine Mechanic	19.30
23931 - Telecommunications Mechanic I	30.91
23932 - Telecommunications Mechanic II	32.20
23950 - Telephone Lineman	32.90
23960 - Welder, Combination, Maintenance	23.02
23965 - Well Driller	24.89
23970 - Woodcraft Worker	25.89
23980 - Woodworker	19.50
24000 - Personal Needs Occupations	
24570 - Child Care Attendant	13.87
24580 - Child Care Center Clerk	17.30
24610 - Chore Aide	12.67
24620 - Family Readiness And Support Services Coordinator	14.89
24630 - Homemaker	19.21
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	29.03
25040 - Sewage Plant Operator	27.01
25070 - Stationary Engineer	29.03
25190 - Ventilation Equipment Tender	23.71
25210 - Water Treatment Plant Operator	27.01
27000 - Protective Service Occupations	
27004 - Alarm Monitor	19.12
27007 - Baggage Inspector	17.98
27008 - Corrections Officer	30.97
27010 - Court Security Officer	30.66
27030 - Detection Dog Handler	20.36
27040 - Detention Officer	30.97
27070 - Firefighter	31.42
27101 - Guard I	17.98
27102 - Guard II	20.36
27131 - Police Officer I	32.37
27132 - Police Officer II	35.94
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	17.13
28042 - Carnival Equipment Repairer	17.97
28043 - Carnival Equipment Worker	14.67
28210 - Gate Attendant/Gate Tender	16.49
28310 - Lifeguard	13.13
28350 - Park Attendant (Aide)	18.46

28510 - Recreation Aide/Health Facility Attendant	18.95
28515 - Recreation Specialist	22.88
28630 - Sports Official	14.69
28690 - Swimming Pool Operator	20.98
29000 - Stevedoring/Longshoremen Occupational Services	
29010 - Blocker And Bracer	29.90
29020 - Hatch Tender	29.90
29030 - Line Handler	29.90
29041 - Stevedore I	26.22
29042 - Stevedore II	32.85
30000 - Technical Occupations	
30010 - Air Traffic Control Specialist, Center (HFO) (see 2)	40.33
30011 - Air Traffic Control Specialist, Station (HFO) (see 2)	27.82
30012 - Air Traffic Control Specialist, Terminal (HFO) (see 2)	30.63
30021 - Archeological Technician I	19.69
30022 - Archeological Technician II	22.02
30023 - Archeological Technician III	27.27
30030 - Cartographic Technician	27.27
30040 - Civil Engineering Technician	25.21
30061 - Drafter/CAD Operator I	19.69
30062 - Drafter/CAD Operator II	22.02
30063 - Drafter/CAD Operator III	24.55
30064 - Drafter/CAD Operator IV	30.20
30081 - Engineering Technician I	19.98
30082 - Engineering Technician II	22.47
30083 - Engineering Technician III	25.28
30084 - Engineering Technician IV	31.22
30085 - Engineering Technician V	38.08
30086 - Engineering Technician VI	46.07
30090 - Environmental Technician	22.90
30210 - Laboratory Technician	21.67
30240 - Mathematical Technician	26.78
30361 - Paralegal/Legal Assistant I	23.36
30362 - Paralegal/Legal Assistant II	28.94
30363 - Paralegal/Legal Assistant III	35.39
30364 - Paralegal/Legal Assistant IV	42.84
30390 - Photo-Optics Technician	27.27
30461 - Technical Writer I	27.81
30462 - Technical Writer II	33.91
30463 - Technical Writer III	41.04
30491 - Unexploded Ordnance (UXO) Technician I	25.63
30492 - Unexploded Ordnance (UXO) Technician II	31.02
30493 - Unexploded Ordnance (UXO) Technician III	37.18
30494 - Unexploded (UXO) Safety Escort	25.63
30495 - Unexploded (UXO) Sweep Personnel	25.63
30620 - Weather Observer, Combined Upper Air Or (see 2)	24.55
Surface Programs	
30621 - Weather Observer, Senior (see 2)	27.27
31000 - Transportation/Mobile Equipment Operation Occupations	
31020 - Bus Aide	16.40
31030 - Bus Driver	19.89
31043 - Driver Courier	16.75
31260 - Parking and Lot Attendant	10.97
31290 - Shuttle Bus Driver	17.80
31310 - Taxi Driver	15.21
31361 - Truckdriver, Light	17.80
31362 - Truckdriver, Medium	18.87
31363 - Truckdriver, Heavy	24.52
31364 - Truckdriver, Tractor-Trailer	24.52
99000 - Miscellaneous Occupations	
99030 - Cashier	10.95
99050 - Desk Clerk	16.69
99095 - Embalmer	28.51
99251 - Laboratory Animal Caretaker I	16.32
99252 - Laboratory Animal Caretaker II	17.14

99310 - Mortician	34.64
99410 - Pest Controller	18.75
99510 - Photofinishing Worker	16.23
99710 - Recycling Laborer	19.78
99711 - Recycling Specialist	22.59
99730 - Refuse Collector	18.36
99810 - Sales Clerk	14.70
99820 - School Crossing Guard	15.07
99830 - Survey Party Chief	23.68
99831 - Surveying Aide	15.48
99832 - Surveying Technician	20.42
99840 - Vending Machine Attendant	19.20
99841 - Vending Machine Repairer	23.47
99842 - Vending Machine Repairer Helper	18.98

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ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$4.27 per hour or \$170.80 per week or \$740.13 per month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; 3 weeks after 5 years, 4 weeks after 10 years, and 5 weeks after 20 years.

Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year, New Year's Day, Martin Luther King Jr's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4174)

THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) COMPUTER EMPLOYEES: Under the SCA at section 8(b), this wage determination does not apply to any employee who individually qualifies as a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals, (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition, because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example, if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate, then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally, because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the application of the computer professional exemption. Therefore, the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills. (29 C.F.R. 541.400).

2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives.

Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

**\*\* UNIFORM ALLOWANCE \*\***

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

The duties of employees under job titles listed are those described in the

"Service Contract Act Directory of Occupations", Fifth Edition, April 2006, unless otherwise indicated. Copies of the Directory are available on the Internet. A links to the Directory may be found on the WHD home page at <http://www.dol.gov/esa/whd/> or through the Wage Determinations On-Line (WDOL) Web site at <http://wdol.gov/>.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form 1444 (SF 1444)}

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. {See Section 4.6 (C)(vi)} When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour decision to the contractor.
- 6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.



# APPENDIX A

## STATE FINANCE LAW

and

Affirmation of Understanding and  
Agreement





**Affirmation of Understanding of  
Agreement Pursuant to  
State Finance Law §139-j (3) and §139-j (6) (b)**

Proposer affirms that it understands and agrees to comply with the procedures of DHCR relative to permissible Contacts as required by State Finance Law §§ 139- j (3) and 139-K (6) (b).

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

\_\_\_\_\_

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**Certification of Compliance  
With State Finance Law §139-k (5)**

Proposer certifies that all information provided to DHCR with respect to State Finance Law §139-k is complete, true, and accurate.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

\_\_\_\_\_

ANDREW M. CUOMO  
GOVERNOR

DARRYL C. TOWNS  
CHAIRMAN/CEO

## Exhibit A

# Standard Clauses and Requirements for Solicitations



*New York State Housing Finance Agency  
State of New York Mortgage Agency  
New York State Affordable Housing Corporation  
State of New York Municipal Bond Bank Agency  
Tobacco Settlement Financing Corporation  
641 Lexington Avenue  
New York, NY 10022  
212-688-4000  
[www.nyshcr.org](http://www.nyshcr.org)*

*Housing Trust Fund Corporation  
Hampton Plaza  
38-40 State Street  
Albany, NY 12207  
[www.nyshcr.org](http://www.nyshcr.org)*

*April 2014*

# **I. AGENCY AND STATE-MANDATED REQUIREMENTS**

## **1.1 Equal Employment Opportunity**

It is the goal of the New York State Housing Finance Agency, Housing Trust Fund Corporation, New York State Affordable Housing Corporation, State of New York Mortgage Agency, State of New York Municipal Bond Bank Agency and Tobacco Settlement Financing Corporation (individually, “Agency” and collectively, “Agencies”) to award contracts to contractors and vendors that evidence compliance with the laws of the State of New York (“State”) prohibiting discrimination in employment.

## **1.2 Participation of New York State Business Enterprises and New York State Residents in Contracts**

- a. It is the goal of the Agencies to promote the participation of New York State business enterprises and New York State residents in Agency contracts.
- b. For potential bidders located in foreign countries, the Agencies may assign or otherwise transfer offset credits created by Agency contracts, directly or indirectly, to third parties located in the State, in accordance with the written directions of the New York State Commissioner of Economic Development. The Agencies cooperate with the Department of Economic Development in efforts to get foreign countries to recognize offset credits created by Agency contracts and assigned or transferred to third parties located in the State.

## **1.3 Procurement Lobbying Law**

- a. All Offerers/Proposers/Respondents/Bidders (“Offerers”)<sup>1</sup> are required to make a written statement affirming that they understand and will abide by the provisions of the New York State Finance Law (“SFL”) relating to the persons who may be contacted during this Agency solicitation process.
- b. Pursuant to SFL §139-j and §139-k<sup>2</sup>, this Agency solicitation includes and imposes certain restrictions on communications between any Agency and any Offerer during the solicitation process. These restrictions apply during the period which commences from the earliest written notice, advertisement or

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<sup>1</sup> “Offerer” means any person or entity that responds to this Agency solicitation. It also means, for purposes of applying the Procurement Lobbying Law, an individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts an Agency about an Agency solicitation process during the Restricted Period of such Agency’s solicitation process. The Procurement Lobbying Law applies to solicitations involving estimated annualized expenditures in excess of \$15,000.

<sup>2</sup> Please click on the following link to view the statutes  
<http://ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html> .

solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from Offerers intending to result in a procurement contract with any Agency and ends with the final contract award and approval by any Agency (the “Restricted Period”). During the Restricted Period, Offerers are not permitted to make Contacts<sup>3</sup> with anyone other than the Agencies’ Designated Contact Officer, unless such communication falls within certain statutory exceptions set forth in SFL §139-j(3)(a).

- c. Employees of the Agencies are required to obtain certain information when a Contact is received from an Offerer during the Restricted Period and include it in the procurement record for the contract. In addition, the Agencies are required to make a Determination of Responsibility of the Offerer pursuant to SFL §139-j and §139-k prior to the award of any contract. Certain findings of non-responsibility can result in denial of a contract award, and, in the event of two (2) findings within a four (4) year period, an Offerer will be debarred from obtaining governmental contracts for a four-year period. This Agency solicitation requires Offerers to disclose prior findings of non-responsibility to the Agencies.

#### 1.4 **Freedom of Information Law**

All information and materials provided in response to this Agency solicitation is subject to disclosure pursuant to the Freedom of Information Law.

#### 1.5 **Reservation of Rights**

- a. The issuance of this Agency solicitation, the submission of a proposal<sup>4</sup> by any Offerer, and/or the acceptance of such proposal by any Agency, does not obligate the Agencies in any manner whatsoever. Legal obligations will only arise upon execution of a formal contract by any Agency and the selected Offerer.
- b. The Agencies reserve the right to:
  - (i) amend, modify, or withdraw this solicitation;
  - (ii) revise any requirements of this solicitation;
  - (iii) require supplemental statements or information from any Offerer;
  - (iv) accept or reject any or all proposals;
  - (v) extend the deadline for submission of proposals;

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<sup>3</sup> “Contact” means, for purposes of applying the Procurement Lobbying Law, any oral, written, or electronic communication from an Offerer, under circumstances where a reasonable person would infer that the communication was intended to influence any Agency solicitation process.

<sup>4</sup> The term “proposal” means any bid, quotation, offer, or response to this solicitation.

- (vi) negotiate or hold discussions with any Offerer and correct deficient proposals that do not completely conform to the instructions contained herein;
- (vii) cancel or reissue this solicitation, in whole or in part, if any Agency deems it in its best interest to do so;
- (viii) hold a pre-bid conference with all Offerers, to answer questions and provide applicable information as necessary;
- (ix) accept a proposal and any subsequent proposal for the contract award from someone other than the lowest cost Offerer consistent with the criteria for the evaluation of proposals;
- (x) make an award in whole or in part;
- (xi) disqualify any Offerer whose conduct and/or proposal fails to conform to the requirements of this solicitation;
- (xii) seek clarification and revisions of proposals;
- (xiii) change any of the solicitation's scheduled dates;
- (xiv) utilize any and all ideas submitted in the proposals received;
- (xv) request best and final offers;
- (xvi) require clarification at any time during the procurement process and correction of arithmetic or other apparent errors to assure a full and complete understanding of a proposal or to determine an Offerer's compliance with the requirements of the solicitation;
- (xvii) re-issue this solicitation, or a similar version, annually or as needed to solicit additional proposals;
- (xviii) interview an Offerer prior to selection; and
- (xix) waive any requirements that are not material.

The Agencies may exercise the foregoing rights at any time without notice and without liability to any Offerer or any other party for expenses incurred in connection with the proposals. All proposals and submissions will be made at the sole cost and expense of the Offerer.

- c. This Agency solicitation and any agreement which may result from it are subject to all applicable laws, rules, and regulations promulgated by any federal, state, or local authority having jurisdiction over the subject matter hereof, as the same may be amended from time to time.
- d. The Agencies shall be the sole judge of whether a proposal complies with the requirements of this solicitation and the merits of such proposal. This solicitation does not commit the Agencies to select a contract awardee, or to procure or contract for the services described herein.
- e. Nothing stated at any time by any representative of the Agencies will effect a change in or constitute an addition to this solicitation unless confirmed in writing by the Agencies.

- f. Offerers responding hereto must agree to keep confidential their proposals and any information received from the Agencies.
- g. Any selected Offerer will be required to execute a contract prescribed by the Agencies, and to abide by all relevant laws and policies of the Agencies with regard to, among other things, conflicts of interest, ethics, lobbying law directives, minority and/or women owned business enterprise participation requirements, equal employment opportunity programs, etc.
- h. The Agencies believe the information set forth in this solicitation is accurate. However, the Agencies, their Directors and/or Members, Officers, agents and employees assume no responsibility for errors and omissions contained therein.
- i. Under no circumstances (including withdrawal of this Agency solicitation before or after proposals are received) will any Offerer have any recourse against the State of New York or any Agency, their Directors, Members, Officers, agents or employees for any expenses incurred or damages sustained as a result of this Agency solicitation process.
- j. The Agencies reserve the right to select qualified proposals for further review and negotiation. Further negotiation may include, but shall not be limited to, bid amounts for contract award on the basis of a formal evaluation of the characteristics, quality and cost of such proposals.
- k. The Agencies reserve the right to make one or more awards based on the proposals that the Agencies deem best in their sole discretion.
- l. Offerers shall not make public announcements or issue news releases pertaining to selection or contract execution without prior written consent of the Agencies.
- m. Any contract subject to approval by an Agency's Board will be awarded only after approval by the Board of the Agency issuing this solicitation.

#### 1.6 **Grounds for Disqualification**

A proposal may be rejected at any time during the evaluation process and at any point thereafter if there are any adverse findings that would prevent any Agency from selecting the Offerer or any person or entity associated or partnering with the Offerer. Such adverse findings include, but are not limited to:

- a. Negative findings from the New York State Inspector General, a federal Inspector General, the U.S. Government Accountability Office, or an Inspector General in another state;
- b. Pending or unresolved legal action from the U.S. Attorney General or from an attorney general in New York or another state;

- c. Pending litigation with New York State or any other state, or a municipality located in New York or another state;
- d. Arson conviction or pending case;
- e. Harassment conviction or pending case;
- f. Federal, state, local, or private mortgage arrears, default, or foreclosure proceedings;
- g. In rem foreclosure;
- h. Sale of tax lien or substantial tax arrears;
- i. Fair housing violation or current litigation;
- j. Defaults under any Federal, State or locally sponsored program;
- k. A record of substantial building code violations or litigation against properties owned and/or managed by the Offerer or by any entity or individual that comprises the Offerer;
- l. Past or pending voluntary or involuntary bankruptcy proceeding;
- m. Conviction for fraud, bribery, or grand larceny;
- n. Listing on Federal or State excluded parties lists; and
- o. Allegations or findings of plagiarism in research activity, and/or theft of intellectual property.

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# APPENDIX B

## NON RESPONSIBILITY DETERMINATION



**APPENDIX B**  
**Offerer Disclosure of**  
**Prior Non-Responsibility Determinations**

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

\_\_\_\_\_

Contract Procurement Number: \_\_\_\_\_

Date: \_\_\_\_\_

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_ Basis of Finding: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

6. If yes, please provide details below.

**Governmental Entity:** \_\_\_\_\_

**Date** of Termination or Withholding of Contract: \_\_\_\_\_

**Basis of Termination or Withholding:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
Signature

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**NON-COLLUSIVE BIDDING CERTIFICATION**

**Required by Section 2878 of the Public Authorities Law**

By submission of this bid, bidder and each person signing on behalf of bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

[3] No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FORGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

**[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]**

**Subscribed to under penalty of perjury under the laws of the State of New York, this day of \_\_\_\_\_, 20\_\_ as the act and deed of said corporation of partnership.**

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

NAMES OF PARTNERS OR PRINCIPALS LEGAL RESIDENCE

_____	_____
_____	_____
_____	_____
_____	_____

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

NAMES      LEGAL RESIDENCE

\_\_\_\_\_  
**President**

\_\_\_\_\_  
**Secretary**

\_\_\_\_\_  
**Treasurer**

\_\_\_\_\_  
**President**

\_\_\_\_\_  
**Secretary**

\_\_\_\_\_  
**Treasurer**

Identifying Data:

**Potential Contractor:** \_\_\_\_\_

**Street Address:** \_\_\_\_\_

**City, Town, etc.** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Title:** \_\_\_\_\_

\_\_\_\_\_  
If applicable, Responsible Corporate Officer Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

**Joint or combined bids by companies or firms must be certified on behalf of each participant:**

<hr/>	
Legal name of person, firm or corporation	Legal name of person, firm or corporation
By _____	By ____ (Name) (Name)
<hr/> Title	<hr/>
<hr/> Street Address	<hr/> Street Address
<hr/> City and State	<hr/> City and State



## GOVERNOR'S OFFICE OF STORM RECOVERY

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Andrew M. Cuomo  
Governor

Seth Diamond  
Director

James Rubin  
Director



# APPENDICES

*for*

# Contracts

*Housing Trust Fund Corporation  
38-40 State Street  
Albany, New York 12207  
[www.nyshcr.org](http://www.nyshcr.org)*

## **APPENDIX I**

### **HUD General Provisions**

The following terms and conditions apply to any contract for which any portion of the funding is derived from a grant made by the United States Department of Housing and Urban Development (“HUD”).

1. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

2. **STATUTORY AND REGULATORY COMPLIANCE**

Contractor shall comply with all laws and regulations applicable to the Community Development Block Grant-Disaster Recovery funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2), including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including the allowability of certain expenses.

3. **BREACH OF CONTRACT TERMS**

The State reserves its right to all administrative, contractual, or legal remedies, including but not limited to suspension or termination of this contract, in instances where the Contractor or any of its subcontractors violate or breach any contract term. If the Contractor or any of its subcontractors violate or breach any contract term, they shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

4. **REPORTING REQUIREMENTS**

The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the State. The Contractor shall cooperate with all State efforts to comply with HUD requirements and regulations pertaining to reporting, including but not limited to 24 C.F.R. §§ 85.40-41 (or 84.50-52, if applicable) and 570.507.

5. **ACCESS TO RECORDS**

The State, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have, at any time and from time to time during normal business hours, access to any work product, books, documents, papers, and records of the Contractor which are related to this contract, for the purpose of inspection, audits, examinations, and making excerpts, copies and transcriptions.

6. MAINTENANCE/RETENTION OF RECORDS

All records connected with this contract will be maintained in a central location and will be maintained for a period of at least four (4) years following the date of final payment and close-out of all pending matters related to this contract.

7. SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

The Contractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

8. RIGHTS IN DATA

(a) *Definitions.* As used in this clause—

*Computer database* or *database* means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

*Computer software:* (1) Means (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and (ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled; and (2) Does not include computer databases or computer software documentation.



*Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

*Data* means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

*Form, fit, and function data means data* relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

*Limited rights* means the rights of HTFC in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

*Limited rights data* means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

*Restricted computer software* means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

*Restricted rights*, as used in this clause, means the rights of the HTFC in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

*Technical data*, means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 403(8)).

*Unlimited rights* means the rights of HTFC to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights.*

(1) Except as provided in paragraph (c) of this clause, HTFC shall have unlimited rights in:  
(i) Data first produced in the performance of this contract; (ii) Form, fit, and function data delivered under this contract; (iii) Data delivered under this contract (except for restricted

computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to: (i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause; (ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause; (iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and (iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) *Copyright.*

(1) *Data first produced in the performance of this contract.* (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of HTFC, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of HTFC is required to assert copyright in all other data first produced in the performance of this contract; (ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of HTFC sponsorship (including contract number); (iii) For data other than computer software, the Contractor grants to HTFC, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of HTFC. For computer software, the Contractor grants to HTFC, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of HTFC.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without the prior written permission of HTFC, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor: (i) Identifies the data; and (ii) Grants to HTFC, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, HTFC shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* HTFC will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) *Release, publication, and use of data.* The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the

Contractor in the performance of this contract, except: (1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations); (2) As expressly set forth in this contract; or (3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by HTFC.

*(e) Unauthorized marking of data.*

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, HTFC may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 253d, the following procedures shall apply prior to canceling or ignoring the markings: (i) HTFC will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings; (ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by HTFC for good cause shown), HTFC shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions; (iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, HTFC will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If HTFC determines that the markings are authorized, the Contractor will be so notified in writing. If HTFC determines, with concurrence of the head of the contracting activity, that the markings are not authorized, HTFC will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of HTFC's decision. HTFC will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by HTFC's determination becoming final (in which instance HTFC will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent HTFC's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of HTFC removing or ignoring authorized markings on data delivered under this contract.

*(f) Omitted or incorrect markings.*

(1) Data delivered to HTFC without any restrictive markings shall be deemed to have been furnished with unlimited rights. HTFC is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside HTFC, the Contractor may request, within 6 months (or a longer time approved by HTFC in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. HTFC may agree to do so if the Contractor: (i) Identifies the data to which the omitted notice is to be applied; (ii) Demonstrates that the omission of the notice was inadvertent; (iii) Establishes that the proposed notice is authorized; and (iv) Acknowledges that HTFC has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, HTFC may: (i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or (ii) Correct any incorrect notices.

*(g) Protection of limited rights data and restricted computer software.*

(1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall: (i) Identify the data being withheld; and (ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to HTFC shall be treated as limited rights data and not restricted computer software.

(h) *Subcontracting.* The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to HTFC under this contract. If a subcontractor refuses to accept terms affording HTFC those rights, the Contractor shall promptly notify HTFC of the refusal and shall not proceed with the subcontract award without authorization in writing from HTFC.

(i) *Relationship to patents or other rights.* Nothing contained in this clause shall imply a license to HTFC under any patent or be construed as affecting the scope of any license or other right otherwise granted to HTFC.

9. ENERGY EFFICIENCY

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the New York State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

10. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be

denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

11. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

12. SECTION 504 OF THE REHABILITATION ACT OF 1973

The Contractor shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), as amended, and any applicable regulations.

The Contractor agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from HUD.

13. AGE DISCRIMINATION ACT OF 1975

The Contractor shall comply with the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), as amended, and any applicable regulations. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

14. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Contractor represents and warrants that it and its subcontractors are not debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs subject to 2 C.F.R. part 2424.

15. CONFLICTS OF INTEREST

The Contractor shall notify the State as soon as possible if this contract or any aspect related to the anticipated work under this contract raises an actual or potential conflict of interest (as defined at 2 C.F.R. Part 215 and 24 C.F.R. § 85.36 (or 84.42, if applicable)). The Contractor shall explain the actual or potential conflict in writing in sufficient detail so that the State is able to assess such actual or potential conflict. The Contractor shall provide the State any additional information necessary for the State to fully assess and address such actual or potential conflict of interest. The Contractor shall accept any reasonable conflict mitigation strategy employed by the State, including but not limited to the use of an independent subcontractor(s) to perform the portion of work that gives rise to the actual or potential conflict.

16. SUBCONTRACTING

When subcontracting, the Contractor shall solicit for and contract with such subcontractors in a manner providing for fair competition. Some of the situations considered to be restrictive of competition include but are not limited to:

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a *brand name* product instead of allowing an *equal* product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

The Contractor represents to the State that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this contract.

The Contractor will include these HUD General Provisions in every subcontract issued by it so that such provisions will be binding upon each of its subcontractors as well as the requirement to flowdown such terms to all lower-tiered subcontractors.

17. ASSIGNABILITY

The Contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the State.

18. INDEMNIFICATION

The Contractor shall indemnify, defend, and hold harmless the State and its agents and employees from and against any and all claims, actions, suits, charges, and judgments arising from or related to the negligence or willful misconduct of the Contractor in the performance of the services called for in this contract.

19. COPELAND “ANTI-KICKBACK” ACT  
(Applicable to all construction or repair contracts)

Salaries of personnel performing work under this contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by

the Secretary of Labor pursuant to the Copeland “Anti-Kickback Act” of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. § 874; and Title 40 U.S.C. § 276c). The Contractor shall comply with all applicable “Anti-Kickback” regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

20. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(Applicable to construction contracts exceeding \$2,000 and contracts exceeding \$2,500 that involve the employment of mechanics or laborers)

The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to that act and with other applicable Federal laws and regulations pertaining to labor standards.

21. DAVIS-BACON ACT

(Applicable to construction contracts exceeding \$2,000 when required by Federal program legislation)

The Contractor shall comply with the Davis Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

22. TERMINATION FOR CAUSE (Applicable to contracts exceeding \$10,000)

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the State, become the State’s property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of the contract by the Contractor, and the State may withhold any payments to the Contractor for

the purpose of set-off until such time as the exact amount of damages due the State from the Contractor is determined.

23. TERMINATION FOR CONVENIENCE (Applicable to contracts exceeding \$10,000)

The State may terminate this contract at any time by giving at least ten (10) days' notice in writing to the Contractor. If the contract is terminated by the State as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

24. SECTION 503 OF THE REHABILITATION ACT OF 1973  
(Applicable to contracts exceeding \$10,000)

The Contractor shall comply with section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

Equal Opportunity for Workers With Disabilities

1. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:
  - i. Recruitment, advertising, and job application procedures;
  - ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
  - iii. Rates of pay or any other form of compensation and changes in compensation;
  - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - v. Leaves of absence, sick leave, or any other leave;
  - vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor;
  - vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - viii. Activities sponsored by the contractor including social or recreational programs; and
  - ix. Any other term, condition, or privilege of employment.



2. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
3. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
4. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Contractor must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).
5. The Contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.
6. The Contractor will include the provisions of this clause in every subcontract or purchase order in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

25. EXECUTIVE ORDER 11246

(Applicable to construction contracts and subcontracts exceeding \$10,000)

The Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- D. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- G. In the event of the Contractor's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- H. Contractor shall incorporate the provisions of A through G above in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor so that such provisions shall be binding on such subcontractor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

26. CERTIFICATION OF NONSEGREGATED FACILITIES  
(Applicable to construction contracts exceeding \$10,000)

The Contractor certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Contractor further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in its files; and that it will forward the preceding notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

27. CERTIFICATION OF COMPLIANCE WITH CLEAN AIR AND WATER ACTS  
(Applicable to contracts exceeding \$100,000)

The Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 U.S.C. § 1857 *et seq.*, the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.*, and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 15 and 32, as amended, Section 508 of the Clean Water Act (33 U.S.C. § 1368) and Executive Order 11738.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

- A. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to 40 C.F.R. 32 or on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 C.F.R. Part 15, as amended.
- B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C. A stipulation that as a condition for the award of the contract, prompt notice will be given of

any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the Excluded Party Listing System or the EPA List of Violating Facilities.

- D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (A) through (D) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

28. LOBBYING (Applicable to contracts exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

29. BONDING REQUIREMENTS

(Applicable to construction and facility improvement contracts exceeding \$100,000)

The Contractor shall comply with New York state bonding requirements, unless they have not been approved by HUD, in which case the Contractor shall comply with the following minimum bonding requirements:

- (1) A *bid guarantee* from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other

negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

- (2) *A performance bond on the part of the Contractor for 100 percent of the contract price.* A “performance bond” is one executed in connection with a contract to secure fulfillment of all the Contractor’s obligations under such contract.
- (3) *A payment bond on the part of the Contractor for 100 percent of the contract price.* A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

30. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

(Applicable to construction contracts exceeding \$100,000)

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD’s regulations in 24 C.F.R. part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the Contractor’s commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.
- E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2)

with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. part 135.

- F. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
  
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

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BOND BANK AGENCY, AND TOBACCO SETTLEMENT FINANCING CORPORATION  
641 LEXINGTON AVENUE, NEW YORK, NEW YORK 10022, (212) 688-4000

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April, 2013

## **APPENDIX II**

### **STANDARD CLAUSES FOR CONTRACTS WITH THE HOUSING TRUST FUND CORPORATION**

**NEW YORK STATE HOUSING FINANCING AGENCY  
STATE OF NEW YORK MORTGAGE AGENCY  
NEW YORK STATE AFFORDABLE HOUSING CORPORATION  
STATE OF NEW YORK MUNICIPAL BOND BANK AGENCY  
TOBACCO SETTLEMENT FINANCING CORPORATION  
(individually or collectively, “Agency” or “Agencies”)**

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**HOUSING TRUST FUND CORPORATION**  
**38-40 STATE STREET, ALBANY, NEW YORK 12207**

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**NEW YORK STATE FINANCE AGENCY, STATE OF NEW YORK MORTGAGE AGENCY**  
**NEW YORK STATE AFFORDABLE HOUSING CORPORATION, STATE OF NEW YORK MUNICIPAL BOND**  
**BANK AGENCY, AND TOBACCO SETTLEMENT FINANCING CORPORATION**  
**641 LEXINGTON AVENUE, NEW YORK, NEW YORK 10022, (212) 688-4000**

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**STANDARD CLAUSES FOR AGENCY CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "Contract") agree to be bound by the following clauses which are hereby made a part of the Contract (the word "Contractor" herein refers to any party other than the State of New York ("State"), whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. ACCOUNTING RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance of work done for the Agency or Agencies under this Contract (hereinafter, collectively, "the Records") consistent with generally accepted bookkeeping practices. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The Agency or Agencies involved in this Contract and any person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The Agency or Agencies shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform the Agencies' Senior Vice President and Counsel, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Agency's or Agencies' right to discovery in any pending or future litigation.

**2. CONFLICTS OF INTEREST.** The Contractor shall not accept any engagement in conflict with the Agency's or Agencies' interest in the subject matter of this Contract.

The Servicer shall not offer to any employee, member or director of the Agency or Agencies' any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

**3. SUBCONSULTANTS.** The Contractor shall not employ, contract with, or use the services of any consultant for the work of this Contract (except such third parties which may be used by the Contractor in the normal course of business, such as couriers, imaging services, etc.) without obtaining the prior written approval of the Agency or Agencies.

**4. NON-ASSIGNABILITY.** This Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent in writing of the Agency or Agencies and any attempts to assign the Contract without the Agency or Agencies' written consent are null and void. However, this Contract shall be binding upon and inure to the benefit of the Agency or Agencies and its successors and assigns.

**5. INDEMNITY.** The Contractor shall indemnify and hold the Agency or Agencies and their employees, officers, Members and Directors (collectively, the "Indemnities") harmless from and against all claims, demands, liability, loss, cost, damage or expense, including attorney's fees, which may be incurred by the Indemnities because of negligence or malfeasance on the part of the Contractor arising out of this Contract.

**6. NON-DISCRIMINATION.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. If this a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason or race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. Contractor is subject to fines of \$50 per person per day for any violation of Section 239 as well as possible termination of this Contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

If directed to do so by the State Commissioner of Human Rights ("Commissioner"), the Contractor will send to each labor union to which the Contractor is bound a notice provided by the Commissioner advising of this provision. The Servicer will keep posted in conspicuous places notices of the Commissioner regarding laws against discrimination. The Contractor will state in all advertisements for employees that all qualified applicants will



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**April, 2013**

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be afforded equal opportunities without discrimination because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status.

If the Contractor has fifteen or more employees, it is an unlawful employment practice for the Contractor to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment, or to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect an individual's status as an employee, because of such individual's race, color, religion, sex, or national origin, or because an individual opposed any practice made unlawful by Title VII of the Civil Rights Act of 1964, as amended, or because he or she made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that Title; and that it shall be an unlawful employment practice to print or publish or cause to be printed or published any notice or advertisement relating to employment indicating any preference, limitation, specification, or discrimination on the basis of race, color, religion, sex, or national origin.

If the Contractor has fifteen or more employees, the Contractor: (1) will make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed; (2) will preserve such records for such periods as the Equal Employment Opportunity Commission ("EEOC") shall prescribe by regulation; (3) will make such reports therefrom as the EEOC shall prescribe by regulation or order; (4) must post and keep posted in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted a notice prepared or approved by the EEOC setting forth excerpts from, or summaries of, pertinent provisions of Title VII of the Civil Rights Act of 1964, as amended, and information pertinent to the filing of a complaint.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will comply with all non-discriminatory employment practices, will furnish all information deemed necessary by the Commissioner, and will permit the Commissioner access to its records to ascertain compliance. The Contractor will bind all subcontractors hired to perform services in connection with this Contract to the requirements of this section, take such action for enforcement as the Commissioner may direct, and notify the Commissioner if such action results in litigation. This Contract may be terminated by the Agency or Agencies upon the

Commissioner's finding of non-compliance with this section, and the Contractor may be declared ineligible for future contracts with an agency of the State or a public authority until the Contractor satisfies the Commissioner of compliance.

**7. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby the Agency or Agencies, is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Agency or Agencies, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) the Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Agency or Agencies' contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the Agency or Agencies, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of this Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of 'a', 'b', and 'c' above, in every subcontract. Section 312 does not apply to: (i) work, goods or services unrelated to this Contract; or (ii) employment outside New York State. The Agency or Agencies shall consider

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compliance by a Contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The Agency or Agencies shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the Agency or Agencies shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

(d) If the procurement of the goods or services provided herein is subject to minority and women-owned participation requirements pursuant to Article 15-A of the Executive Law, the Contractor shall be liable to the Agency or Agencies for liquidated or other appropriate damages and shall provide for other appropriate remedies on account of such breach in the event it is found that the Contractor willfully and intentionally failed to comply with the minority and women-owned participation requirements set-forth in Article 15-A of the Executive Law.

**8. PROPRIETARY INFORMATION.** All memoranda, analyses, spreadsheets and other pertinent documents or writings, including reports and financial statements developed or prepared by, or for, the Contractor in connection with the performance of this Contract are "Proprietary Information" and shall be, and remain, the property of the Agency or Agencies. All original documents constituting Proprietary Information shall be delivered to the Agency or Agencies by the Contractor, or any subcontractor, or any other person possessing them, upon the termination of this Contract or upon the earlier request of the Agency or Agencies, except that the Contractor may retain copies for its files. Proprietary Information may not be utilized, disclosed or otherwise made available to other persons by the Contractor without the prior written approval of the Agencies' Senior Vice President and Counsel. The provisions of this section shall be in addition to, and not in derogation of, any duty imposed upon the Contractor by any law, regulation or rule governing professional conduct respecting confidentiality.

**9. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices submitted for payment for the sale of goods or services or the lease of real or personal property to the Agency or Agencies must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both

such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the Agency or Agencies is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by Agency or Agencies to purchase the goods or services or lease the real or personal property covered by this Contract or lease. The information is maintained by Disbursement Manager at the Agency or Agencies, 641 Lexington Avenue, New York, New York 10022, under the name "Vendor Federal Social Security and Federal Employee Identification Numbers."

**10. CONTRACTUAL RELATIONSHIP.** It is expressly understood that the relationship between the Agency or Agencies and the Contractor is an independent contractual relationship and neither the Contractor, its employees, nor its subcontractors shall be considered employees of the Agency or Agencies for any purpose. In addition, the Contractor shall execute the Certificate of Interest attached hereto as Exhibit A and incorporated herein.

Please refer to the following link on the Agency's web site to view each of the Agency's Prompt Payment Policies at <http://www.nyshcr.org/Agencies/HTFC/Publications/PromptPaymentReport2012.pdf> or <http://www.nyshcr.org/AboutUs/Procurement/Contractinformation.htm>.

**11. ENTIRE AGREEMENT.** This Contract constitutes the entire agreement between the Contractor and the Agency or Agencies with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix I, the terms of this Appendix I shall control.

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**12. MODIFICATION.** Waiver, discharge, amendment, supplement, extension or other modification of this Contract shall be subject to prior approval by the Agency or Agencies and may be effected only by an instrument in writing signed by the parties to this Contract.

**13. SECTION HEADINGS.** The caption of sections in this Contract are inserted solely for convenience of reference and are not intended to define, limit, or describe the scope of this Contract or any provision hereof or to otherwise affect this Contract in any way. The section headings shall not be considered in any way in construing this Contract.

**14. COUNTERPARTS.** This Contract may be executed in any number of counterparts. Each such counterpart shall be deemed to be a duplicate original. All such counterparts shall constitute but one and the same instrument.

**15. GOVERNING LAW.** This Contract has been executed and delivered in, and shall be construed and enforced in accordance with the laws of, the State of New York. In the event of conflict between New York State law and federal laws and regulations, the latter shall prevail.

**16. NOTICES.** All notices and other communications given hereunder shall not be effective for any purpose whatsoever unless in writing and delivered by hand or mailed by United States first class registered or certified mail, return receipt requested. Notice shall be deemed to have been given, if delivered by hand, when actually received by the party being notified, or, if mailed, when addressed (a) if to the Contractor, to the attention of the Contractor's authorized signatory of this Contract at the address specified for the Contractor on page one of this Contract, or at such other address as to which the Contractor shall have notified the Agency or Agencies, and (b) if to the Agency or Agencies, to the attention of the Senior Vice President and Counsel, at the address for the Agency or Agencies on page one this Contract, or at such other address of which the Agency or Agencies shall have notified the Contractor.

**17. SEVERABILITY.** All rights, powers and remedies provided herein may be exercised only to the extent that they do not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Contract invalid, unenforceable or not entitled to be recorded, registered, or filed under applicable law. If any provision or term of this Contract or any portion of a provision shall be held to be invalid, illegal or unenforceable, only such provision or part thereof shall be affected by such holding and this Contract shall be construed as if such

invalid, illegal or unenforceable provision or part thereof had not been contained herein.

**18. WORKERS' COMPENSATION.** This Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**19. NO ARBITRATION.** Disputes involving this Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**20. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), the Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service of process hereunder shall be complete upon the Contractor's actual receipt of process or upon the Agency's or Agencies' receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contractor must promptly notify the Agency or Agencies, in writing, of each and every change of address to which service of process can be made. Service of process by the Agency or Agencies to the last known address shall be sufficient. The Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**21. NON-COLLUSIVE BIDDING CERTIFICATION.** If this Contract was awarded based upon the submission of a bid or proposal, the Contractor affirms, under penalty of perjury, that the prices in its bid or proposal were arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, or as to any matter relating to such prices with any other Contractor or with any competitor. The Contractor further affirms that, at the time the Contractor submitted its bid or proposal, an authorized and responsible person executed and delivered a non-collusive bidding certification to the Agency or Agencies on the Contractor's behalf.

**22. LOBBYING REFORM LAW DISCLOSURE.** If the procurement of the goods or services provided herein were applicable to Lobbying Reform Law Disclosure as pursuant to State Finance Law §§139-j and 139-k, the Agency or Agencies reserves the right to terminate this Contract in the event it is found that the certification filed by the Offerer/Bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Agency or

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Agencies may exercise their termination right by providing written notification to the Contractor.

**23. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**24. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100      Fax: 518-292-5884  
Email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, New York 10017  
Telephone: 212-803-2424  
Email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<http://esd.ny.gov/MWBE/directorySearch.html>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or Contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this Contract and agrees to cooperate with the State in these efforts.

**25. GENERAL RESPONSIBILITY LANGUAGE.** The Contractor shall at all times during Contract term remain responsible. The Contractor agrees, if requested by the Agencies, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

For purposes of this Agreement, Contractor responsibility generally means that the Contractor has the integrity to justify the award of public dollars and the capacity to perform the requirements of this Contract fully. In connection herewith, to the extent that the Agencies may make certain determinations with respect to Contractor responsibility, wherein the Agencies determine whether it has reasonable assurances that a Contractor is responsible, is an important part of the procurement process, promoting fairness in contracting, mitigating contract issues, and protecting the Contractor and the Agencies against failed contracts. In making such a responsibility determination, the Agencies shall evaluate the Contractor's responsibility with respect to four factors: (a) financial and organizational capacity; (ii) legal authority to do business in New York State; (c) integrity; and (iv) previous performance.

**26. SUSPENSION OF WORK (for Non-Responsibility).** The Agencies reserve the right to suspend any or all activities under this Contract, at any time, when the Agency discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Agencies issue a written notice authorizing a resumption of performance under the Contract.

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**HOUSING TRUST FUND CORPORATION**  
**38-40 STATE STREET, ALBANY, NEW YORK 12207**

**NEW YORK STATE FINANCE AGENCY, STATE OF NEW YORK MORTGAGE AGENCY  
NEW YORK STATE AFFORDABLE HOUSING CORPORATION, STATE OF NEW YORK MUNICIPAL BOND  
BANK AGENCY, AND TOBACCO SETTLEMENT FINANCING CORPORATION  
641 LEXINGTON AVENUE, NEW YORK, NEW YORK 10022, (212) 688-4000**

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**April, 2013**

**27. Termination (for Non-Responsibility).** Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Agency staff, the Contract may be terminated by the Agencies at the Contractor's expense where the Contractor is determined by the Agencies to be non-responsible. In such event, the Agencies may complete the contractual requirements in any manner they deem advisable and pursue available legal or equitable remedies for breach.

**APPENDIX III**  
**DIVERSITY FORMS**

# **APPENDIX III**

## **DIVERSITY FORMS**

### **SECTION 1 : HUD**

# Contract and Subcontract Activity

U.S. Department of Housing and Urban Development

OMB Approval No.: 2535-0117 (exp. 1/31/2013)

Public Reporting Burden for this collection of information is estimated to average .50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is voluntary. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB Control Number.

Executive Order 12421 dated July 14, 1983, directs the Minority Business Development Plans shall be developed by each Federal Agency and that these annual plans shall establish minority business development objectives. The information is used by HUD to monitor and evaluate MBE activities against the total program activity and the designated minority business enterprise (MBE) goals. The Department requires the information to provide guidance and oversight for programs for the development of minority business enterprise concerning Minority Business Development. If the information is not collected HUD would not be able to establish meaningful MBE goals nor evaluate MBE performance against these goals. While no assurances of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request.

**Privacy Act Notice** - The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. It will not be disclosed or released outside the United States Department of Housing and Urban Development without your consent, except as required or permitted by law.

1. Grantee/Project Owner/Developer/Sponsor/Builder/Agency				Check if: PHA <input type="checkbox"/> IHA <input type="checkbox"/>	2. Location (City, State, ZIP Code)						
3a. Name of Contact Person			3b. Phone Number (Including Area Code)		4. Reporting Period <input type="checkbox"/> Oct. 1 - Sept. 30 (Annual-FY)			5. Program Code (Not applicable for CPD programs.) See explanation of codes at bottom of page. Use a separate sheet for each program code.		6. Date Submitted to Field Office	

Grant/Project Number or HUD Case Number or other identification of property, subdivision, dwelling unit, etc.  7a.	Amount of Contract or Subcontract  7b.	Type of Trade Code (See below) 7c.	Contractor or Subcontractor Business Racial/Ethnic Code (See below) 7d.	Woman Owned Business (Yes or No) 7e.	Prime Contractor Identification (ID) Number 7f.	Sec. 3 7g.	Subcontractor Identification (ID) Number 7h.	Sec. 3 7i.	Contractor/Subcontractor Name and Address 7j.														
									Name	Street	City	State	Zip Code										

- |   |   |   |   |
|---|---|---|---|
| <p><b>CPD:</b><br/>                 1 = New Construction<br/>                 2 = Education/Training<br/>                 3 = Other</p> | <p><b>7c: Type of Trade Codes:<br/>Housing/Public Housing:</b><br/>                 1 = New Construction<br/>                 2 = Substantial Rehab.<br/>                 3 = Repair<br/>                 4 = Service<br/>                 5 = Project Mangt.<br/>                 6 = Professional<br/>                 7 = Tenant Services<br/>                 8 = Education/Training<br/>                 9 = Arch./Engrg. Appraisal<br/>                 0 = Other</p> | <p><b>7d: Racial/Ethnic Codes:</b><br/>                 1 = White Americans<br/>                 2 = Black Americans<br/>                 3 = Native Americans<br/>                 4 = Hispanic Americans<br/>                 5 = Asian/Pacific Americans<br/>                 6 = Hasidic Jews</p> | <p><b>5: Program Codes</b><br/>                 (Complete for Housing and Public and Indian Housing programs only):<br/>                 1 = All insured, including Section 8<br/>                 2 = Flexible Subsidy<br/>                 3 = Section 8 Noninsured, Non-HFDA<br/>                 4 = Insured (Management)<br/>                 5 = Asian/Pacific Americans<br/>                 5 = Section 202<br/>                 6 = HUD-Held (Management)<br/>                 7 = Public/Indian Housing</p> |
|---|---|---|---|



This report is to be completed by grantees, developers, sponsors, builders, agencies, and/or project owners for reporting contract and subcontract activities of \$10,000 or more under the following programs: Community Development Block Grants (entitlement and small cities); Urban Development Action Grants; Housing Development Grants; Multifamily Insured and Noninsured; Public and Indian Housing Authorities; and contracts entered into by recipients of CDBG rehabilitation assistance.

Contracts/subcontracts of less than \$10,000 need be reported only if such contracts represent a significant portion of your total contracting activity. Include only contracts executed during this reporting period.

This form has been modified to capture Section 3 contract data in columns 7g and 7i. Section 3 requires that the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. Recipients using this form to report Section 3 contract data must also use Part I of form HUD-60002 to report employment and training opportunities data. Form HUD-2516 is to be

completed for public and Indian housing and most community development programs. Form HUD-60002 is to be completed by all other HUD programs including State administered community development programs covered under Section 3.

A Section 3 contractor/subcontractor is a business concern that provides economic opportunities to low- and very low-income residents of the metropolitan area (or nonmetropolitan county), including a business concern that is 51 percent or more owned by low- or very low-income residents; employs a substantial number of low- or very low-income residents; or provides subcontracting or business development opportunities to businesses owned by low- or very low-income residents. Low- and very low-income residents include participants in Youthbuild programs established under Subtitle D of Title IV of the Cranston-Gonzalez National Affordable Housing Act.

The terms "low-income persons" and "very low-income persons" have the same meanings given the terms in section 3(b)(2) of the United States Housing Act of 1937. Low-income persons mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary

may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families. Very low-income persons means low-income families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

Submit two (2) copies of this report to your local HUD Office within ten (10) days after the end of the reporting period you checked in item 4 on the front.

Complete item 7h. only once for each contractor/subcontractor on each semi-annual report.

Enter the prime contractor's ID in item 7f. for all contracts and subcontracts. Include only contracts executed during this reporting period. PHAs/IHAs are to report all contracts/subcontracts.

### Community Development Programs

**1. Grantee:** Enter the name of the unit of government submitting this report.

**3. Contact Person:** Enter name and phone of person responsible for maintaining and submitting contract/subcontract data.

**7a. Grant Number:** Enter the HUD Community Development Block Grant Identification Number (with dashes). For example: B-32-MC-25-0034. For Entitlement Programs and Small City multi-year comprehensive programs, enter the latest approved grant number.

**7b. Amount of Contract/Subcontract:** Enter the dollar amount rounded to the nearest dollar. If subcontractor ID number is provided in 7f, the dollar figure would be for the subcontract only and not for the prime contract.

**7c. Type of Trade:** Enter the numeric codes which best indicates the contractor's/subcontractor's service. If subcontractor ID number is provided in 7f., the type of trade code would be for the subcontractor only and not for the prime contractor. The "other" category includes supply, professional services and all other activities except construction and education/training activities.

**7d. Business Racial/Ethnic/Gender Code:** Enter the numeric code which indicates the racial/ethnic /gender character of the owner(s) and controller(s) of 51% of the business. When 51% or more is not owned and controlled by any single racial/ethnic/gender category, enter the code which seems most appropriate. If the subcontractor ID number is provided, the code would apply to the subcontractor and not to the prime contractor.

**7e. Woman Owned Business:** Enter Yes or No.

**7f. Contractor Identification (ID) Number:** Enter the Employer (IRS) Number of the Prime Contractor as the unique identifier for prime recipient of HUD funds. Note that the Employer (IRS) Number must be provided for each contract/subcontract awarded.

**7g. Section 3 Contractor:** Enter Yes or No.

**7h. Subcontractor Identification (ID) Number:** Enter the Employer (IRS) Number of the subcontractor as the unique identifier for each subcontract awarded from HUD funds. When the subcontractor ID Number is provided, the respective Prime Contractor ID Number must also be provided.

**7i. Section 3 Contractor:** Enter Yes or No.

**7j. Contractor/Subcontractor Name and Address:** Enter this information for each

Previous editions are obsolete.

firm receiving contract/subcontract activity only one time on each report for each firm.

### Multifamily Housing Programs

**1. Grantee/Project Owner:** Enter the name of the unit of government, agency or mortgagor entity submitting this report.

**3. Contact Person:** Same as item 3 under CPD Programs.

**4. Reporting Period:** Check only one period.

**5. Program Code:** Enter the appropriate program code.

**7a. Grant/Project Number:** Enter the HUD Project Number or Housing Development Grant or number assigned.

**7b. Amount of Contract/Subcontract:** Same as item 7b. under CPD Programs.

**7c. Type of Trade:** Same as item 7c. under CPD Programs.

**7d. Business Racial/Ethnic/Gender Code:** Same as item 7d. under CPD Programs.

**7e. Woman Owned Business:** Enter Yes or No.

**7f. Contractor Identification (ID) Number:** Same as item 7f. under CPD Programs.

**7g. Section 3 Contractor:** Enter Yes or No.

**7h. Subcontractor Identification (ID) Number:** Same as item 7h. under CPD Programs.

**7i. Section 3 Contractor:** Enter Yes or No.

**7j. Contractor/Subcontractor Name and Address:** Same as item 7j. under CPD Programs.

### Public Housing and Indian Housing Programs

PHAs/IHAs are to report all contracts/subcontracts. Include only contracts executed during this reporting period.

**1. Project Owner:** Enter the name of the unit of government, agency or mortgagor entity submitting this report. Check box as appropriate.

**3. Contact Person:** Same as item 3 under CPD Programs.

**4. Reporting Period:** Check only one period.

**5. Program Code:** Enter the appropriate program code.

**7a. Grant/Project Number:** Enter the HUD Project Number or Housing Development Grant or number assigned.

**7b. Amount of Contract/Subcontract:** Same as item 7b. under CPD Programs.

**7c. Type of Trade:** Same as item 7c. under CPD Programs.

**7d. Business Racial/Ethnic/Gender Code:** Same as item 7d. under CPD Programs.

**7e. Woman Owned Business:** Enter Yes or No.

**7f. Contractor Identification (ID) Number:** Same as item 7f. under CPD Programs.

**7g. Section 3 Contractor:** Enter Yes or No.

**7h. Subcontractor Identification (ID) Number:** Same as item 7h. under CPD Programs.

**7i. Section 3 Contractor:** Enter Yes or No.

**7j. Contractor/Subcontractor Name and Address:** Same as item 7j. under CPD Programs.



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**Part II: Contracts Awarded**

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## 1. Construction Contracts:

A. Total dollar amount of all contracts awarded on the project	\$	
B. Total dollar amount of contracts awarded to Section 3 businesses	\$	
C. Percentage of the total dollar amount that was awarded to Section 3 businesses		%
D. Total number of Section 3 businesses receiving contracts		

## 2. Non-Construction Contracts:

A. Total dollar amount of all non-construction contracts awarded on the project/activity	\$	
B. Total dollar amount of non-construction contracts awarded to Section 3 businesses	\$	
C. Percentage of the total dollar amount that was awarded to Section 3 businesses		%
D. Total number of Section 3 businesses receiving non-construction contracts		

**Part III: Summary**

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

- Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contacts with community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.
- Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.
- Participated in a HUD program or other program, which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.
- Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.
- Other; describe below

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Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u., mandates that the Department ensure that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as a self-monitoring tool. The data is entered into a data base and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

**Instructions:** This form is to be used to report annual accomplishments regarding employment and other economic opportunities provided to low- and very low-income persons under Section 3 of the Housing and Urban Development Act of 1968. The Section 3 regulations apply to any **public and Indian Housing programs** that receive: (1) development assistance pursuant to Section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to Section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to Section 14 of the U.S. Housing Act of 1937 and to **recipients of housing and community development assistance in excess of \$200,000** expended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; or (3) other public construction projects; and to **contracts and subcontracts in excess of \$100,000** awarded in connection with the Section-3-covered activity.

Form HUD-60002 has three parts which are to be completed for all programs covered by Section 3. Part I relates to **employment and training**. The recipient has the option to determine numerical employment/training goals either on the basis of the number of hours worked by new hires (columns B, D, E and F) or the number of new hires utilized on the Section 3 covered project (columns B, C and F). Part II of the form relates to **contracting**, and Part III summarizes recipients' **efforts** to comply with Section 3.

Recipients or contractors subject to Section 3 requirements must maintain appropriate documentation to establish that HUD financial assistance for housing and community development programs were directed toward low- and very low-income persons.\* A recipient of Section 3 covered assistance shall submit two copies of this report to the local HUD Field Office. Where the program providing assistance requires an annual performance report, this Section 3 report is to be submitted at the same time the program performance report is submitted. Where an annual performance report is not required, this Section 3 report is to be submitted by January 10 and, if the project ends before December 31, within 10 days of project completion. **Only Prime Recipients are required to report to HUD. The report must include accomplishments of all recipients and their Section 3 covered contractors and subcontractors.**

HUD Field Office: Enter the Field Office name forwarding the Section 3 report.

1. Recipient: Enter the name and address of the recipient submitting this report.
2. Federal Identification: Enter the number that appears on the award form (with dashes). The award may be a grant, cooperative agreement or contract.
3. Dollar Amount of Award: Enter the dollar amount, rounded to the nearest dollar, received by the recipient.
- 4 & 5. Contact Person/Phone: Enter the name and telephone number of the person with knowledge of the award and the recipient's implementation of Section 3.
6. Reporting Period: Indicate the time period (months and year) this report covers.
7. Date Report Submitted: Enter the appropriate date.

Submit two (2) copies of this report to the to the HUD Field Office of Fair Housing and Equal Opportunity, Program Operations and Compliance Center Director, at the same time the performance report is submitted to the program office. For those programs where such a report is not required, the Section 3 report is submitted by January 10. Include only contracts executed during the reporting period specified in item 8. PHAs/HAs are to report all contracts/subcontracts.

\* The terms "low-income persons" and "very low-income persons" have the same meanings given the terms in section 3(b)(2) of the United States Housing Act of 1937. **Low-income persons** mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for

8. Program Code: Enter the appropriate program code as listed at the bottom of the page.
9. Program Name: Enter the name of the HUD Program corresponding with the "Program Code" in number 8.

#### **Part I: Employment and Training Opportunities**

**Column A:** Contains various job categories. Professionals are defined as people who have special knowledge of an occupation (i.e., supervisors, architects, surveyors, planners, and computer programmers). For construction positions, list each trade and provide data in columns B through F for each trade where persons were employed. The category of "Other" includes occupations such as service workers.

**Column B:** Enter the number of new hires for each category of workers identified in **Column A** in connection with this award. New Hire refers to a person who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

**Column C:** Enter the number of Section 3 new hires for each category of workers identified in **Column A** in connection with this award. Section 3 new hire refers to a Section 3 resident who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

**Column D:** Enter the percentage of all the staff hours of new hires (Section 3 residents) in connection with this award.

**Column E:** Enter the percentage of the total staff hours worked for Section 3 employees and trainees (including new hires) connected with this award. Include staff hours for part-time and full-time positions.

**Column F:** Enter the number of Section 3 residents that were employed and trained in connection with this award.

#### **Part II: Contract Opportunities**

##### **Block 1: Construction Contracts**

Item A: Enter the total dollar amount of all contacts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project/program that were awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

##### **Block 2: Non-Construction Contracts**

Item A: Enter the total dollar amount of all contacts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

#### **Part III: Summary of Efforts - Self-explanatory**

smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings such that variations are necessary because of prevailing levels of construction costs or unusually high- or low-income families. **Very low-income persons** mean low-income families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

# **APPENDIX III**

## **DIVERSITY FORMS**

### **SECTION 2 : HTFC**

**PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN  
REQUIREMENTS AND PROCEDURES  
FOR CONTRACTS WITH  
HOUSING TRUST FUND CORPORATION**

**I. General Provisions**

- A. The Corporation is required to implement the provisions of New York State (“State”) Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Housing Trust Fund Corporation (“Corporation”), to fully comply and cooperate with the Corporation in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of Contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to section VII of this Appendix II or enforcement proceedings as allowed by the Contract.

**II. Contract Goals**

- A. For purposes of this procurement, the Corporation hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 10% for Minority-Owned Business Enterprises (“MBE”) participation and 10% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on this Contract and achieving the Contract Goals established in section III-A, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:  
<http://www.empire.state.ny.us/MWBE/directorySearch.html> .

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on this Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract. In accordance with section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of Contract and the Contractor shall be liable to the Corporation for liquidated or other appropriate damages, as set forth herein.

### **III. Equal Employment Opportunity (EEO)**

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  2. The Contractor shall submit an EEO policy statement (Form PROC-8) to the Corporation within seventy two (72) hours after the date of the notice by Corporation to award the Contract to the Contractor.
  3. If Contractor or Subcontractor does not have an existing EEO policy statement, the Corporation may provide the Contractor or Subcontractor a model statement (see Form PROC-4 – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
  4. The Contractor’s EEO policy statement shall include the following language:
    - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
    - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
    - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national

origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

- d. The Contractor will include the provisions of sections (a) through (c) of this subsection and paragraph "E" of this section, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this Contract.

#### C. Form PROC-1- Staffing Plan

To ensure compliance with this section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of this Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the Contract.

#### D. Form PROC-5 - Workforce Employment Utilization Report ("Workforce Report")

1. Once a Contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Corporation of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

Reports should be submitted by email to: [MWBE\\_EEOCreports@stormrecovery.ny.gov](mailto:MWBE_EEOCreports@stormrecovery.ny.gov).

2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the subject Contract. When the workforce to be utilized on the Contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

- D. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.



#### **IV. MWBE Utilization Plan**

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (Form PROC-2) either prior to, or at the time of, the execution of this Contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on this Contract pursuant to the prescribed MWBE goals set forth in section III-A of this Appendix II.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of this Contract. Upon the occurrence of such a material breach, the Corporation shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

#### **V. Waivers**

- A. For Waiver Requests Contractor should use Form PROC-3 – Waiver Request.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Corporation shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the Corporation, upon review of the Utilization Plan and updated Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Corporation may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

#### **VI. Quarterly MWBE Contractor Compliance Report**

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form PROC-6) to the Corporation by the 10<sup>th</sup> day following each end of quarter (i.e., March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup>) over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

Reports should be submitted by email to: [MWBE\\_EEOCreports@stormrecovery.ny.gov](mailto:MWBE_EEOCreports@stormrecovery.ny.gov).

#### **VII. Liquidated Damages - MWBE Participation**

- A. Where the Corporation determines that Contractor is not in compliance with the requirements of this Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Corporation liquidated damages.

- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Agency, Contractor shall pay such liquidated damages to the Corporation within sixty (60) days after they are assessed by the Corporation unless prior to the expiration of such sixtieth (60<sup>th</sup>) day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to subdivision 8 of section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Corporation.

**ALL FORMS ARE ATTACHED BELOW**

**EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN**  
**Submit with Bid or Proposal – Instructions on page 2**

<b>Solicitation/Program Name:</b>	<b>Report includes:</b> <input type="checkbox"/> Workforce to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force
<b>Offeror's Name:</b>	<b>Reporting Entity:</b> <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor <b>Subcontractor's name</b> _____
<b>Offeror's Address:</b>	

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Total Work force	Workforce by Gender		Work force by Race/Ethnic Identification														
		Total Male (M)	Total Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		Disabled (M) (F)		Veteran (M) (F)		
Officials/Administrators																		
Professionals																		
Technicians																		
Service Maintenance Workers																		
Office/Clerical																		
Skilled Craft Workers																		
Paraprofessionals																		
Protective Service Workers																		
Totals																		

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b>	<b>DATE:</b>
	<b>EMAIL ADDRESS:</b>	
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>		<b>SUBMIT COMPLETED WITH BID OR PROPOSAL</b>

**General instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's or subcontractor's total work force, the Offeror shall complete this form for the contractor's or subcontractor's total work force.

**Instructions for completing:**

1. Enter the Solicitation number or RFP number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Offerors' total workforce.
4. Enter the total work force by EEO job category.
5. Break down the total work force by gender and enter under the heading 'Workforce by Gender'
6. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the Designated Contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male (M) or Female (F)

## M/WBE UTILIZATION PLAN

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

**Offeror's Name:**

**Federal Identification Number:**

**Address:**

**Solicitation Number:**

**City, State, Zip Code:**

**Telephone Number:**

**Region/Location of Work:**

**M/WBE Goals in the Contract:** MBE    %    WBE    %

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts / Supplies/Services and intended performance dates of each component of the contract.
A.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

**6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM (PROC-5).**

<p><b>PREPARED and APPROVED BY:</b></p> <p><b>NAME AND TITLE OF PREPARER (Print or Type):</b></p> <p><b>Signature:</b> _____ Authorized Signature</p> <p><b>DATE:</b></p> <p><b>TELEPHONE NO:</b></p> <p><b>EMAIL ADDRESS:</b></p> <p><b>SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.</b></p>	<p><b>FOR AGENCY USE ONLY</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;"><b>REVIEWED BY:</b></td> <td style="width: 30%;"><b>DATE:</b></td> </tr> </table> <p><b>UTILIZATION PLAN APPROVED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO    Date:</p> <p><b>Contract No:</b></p> <p><b>Contract Award Date:</b></p> <p><b>Estimated Date of Completion:</b></p> <p><b>Amount Obligated Under the Contract:</b></p> <p><b>NOTICE OF DEFICIENCY ISSUED:</b>    <input type="checkbox"/> YES    <input type="checkbox"/> NO Date: _____</p> <p><b>NOTICE OF ACCEPTANCE ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p>	<b>REVIEWED BY:</b>	<b>DATE:</b>
<b>REVIEWED BY:</b>	<b>DATE:</b>		



## REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

**When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the request:**

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses made by certified M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number, and email address of offeror/contractor's representative authorized to discuss and negotiate this waiver request.
11. Copy of notice of application receipt issued by Empire State Development (ESD).

**Note:**

Unless a Total Waiver has been granted, Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by the contracting entity, to determine M/WBE compliance.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL  
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

**M/WBE AND EEO POLICY STATEMENT**

I, \_\_\_\_\_, the (awardee/contractor)\_\_\_\_\_ agree to adopt the following policies with respect to the project being developed or services rendered for (name agency/ies or project location)\_\_\_\_\_

**MWBE**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from Agency(ies) and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

**EEO**

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative for a statement that it will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_

By \_\_\_\_\_

Print: \_\_\_\_\_ Title: \_\_\_\_\_



\_\_\_\_\_ is designated as the Minority Business Enterprise Liaison

He/she is responsible for administering the Minority and Women-Owned Business Enterprises-Equal Employment Opportunity (M/WBE-EEO) program.

**M/WBE Contract Goals**

20% Minority and Women's Business Enterprise Participation

10% Minority Business Enterprise Participation

10% Women's Business Enterprise Participation

**EEO Contract Goals**

\_\_\_% Minority Labor Force Participation

\_\_\_% Female Labor Force Participation

## WORKFORCE EMPLOYMENT UTILIZATION

<b>Contract No.:</b>	<b>Reporting Entity:</b> <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	<b>Reporting Period:</b> <input type="checkbox"/> January 1, 20__ - March 31, 20__ <input type="checkbox"/> April 1, 20__ - June 30, 20__ <input type="checkbox"/> July 1, 20__ - September 30, 20__ <input type="checkbox"/> October 1, 20__ - December 31, 20__
<b>Contractor's Name:</b>		<b>Report includes:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force
<b>Contractor's Address:</b>		

Enter the total number of employees in each classification in each of the EEO-Job Categories identified.

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification								Disabled		Veteran				
		Male (M)	Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		(M)	(F)	(M)	(F)	
Officials/Administrators																		
Professionals																		
Technicians																		
Sales Workers																		
Office/Clerical																		
Craft Workers																		
Laborers																		
Service Workers																		
Temporary /Apprentices																		
Totals																		

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b>	<b>DATE:</b>
	<b>EMAIL ADDRESS:</b>	
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>	Submit completed form to: NYS Governor's Office of Storm Recovery, 25 Beaver Street, 5 <sup>th</sup> Floor, New York, NY 10004, or MWBE_EEOCreports@stormrecovery.ny.gov	

**General Instructions:** The work force utilization is to be submitted on a quarterly basis during the life of the contract to report the actual work force utilized in the performance of the contract broken down by the specified categories. When the work force utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total work force, the contractor and/or subcontractor shall submit a Utilization Report of the work force utilized on the contract. When the work force to be utilized on the contract cannot be separated out from the contractor's and/or subcontractor's total work force, information on the total work force shall be included in the Utilization Report. Utilization reports are to be completed for the quarters ended 3/31, 6/30, 9/30 and 12/31 and submitted to the M/WBE Program Management Unit within 15 days of the end of each quarter. If there are no changes to the work force utilized on the contract during the reporting period, the contractor can submit a copy of the previously submitted report indicating no change with the date and reporting period updated.

**Instructions for completing:**

1. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
2. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
3. Check off the box that corresponds to the reporting period for this report.
4. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
5. Enter the total work force by EEO job category.
6. Break down the total work force by gender and enter under the heading 'Work force by Gender'
7. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Program Management Unit at (518) 474-5513 if you have any questions.
8. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
9. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

**WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

**BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.

**HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

**ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

**NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- DISABLED INDIVIDUAL            any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- VIETNAM ERA VETERAN        a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- GENDER                            Male    or            Female

Is this a final report? Check one.  
 Yes \_\_\_\_\_ No \_\_\_\_\_

M/WBE Quarterly Report  
 of

NYS AGENCY/AGENCIES Contract No. \_\_\_\_\_ Project No. \_\_\_\_\_

The following information indicates the payment amounts made by the grantee/contractor to the NYS Certified M/WBE subcontractor on this project. The payments as shown are in compliance with contract documents for the above reference project.

Contractor's Name and Address		Federal ID#	Goals/Dollar Amount		Contract Type:						
			MBE ___% = \$ _____ WBE ___% = \$ _____		Paid to Contractor this Quarter: Total Paid to Contractor to Date:						
M/WBE Subcontractor/Vendor		Product Code*	Work Status this Report	Total Subcontractor Contract Amount		Payments this Quarter		Previous Payments		Total Payments Made to Date	
				MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE
Name: Fed ID#:			<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
Name: Fed ID#:			<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
Name: Fed ID#:			<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
Name: Fed ID#:			<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete								
<b>Total:</b>											

\*See Next Page for Product Codes

Date: \_\_\_\_\_ Name: \_\_\_\_\_ Title: \_\_\_\_\_ Signature: \_\_\_\_\_

Use the following codes in the Product Code column to indicate the category of work for which the M/WBE was utilized:

**PRODUCT CODE KEY:**

<b>A</b>	<b>Agriculture/Landscaping (e.g., all forms of landscaping services)</b>
<b>B</b>	<b>Mining (e.g., Geological Investigation)</b>
<b>C</b>	<b>Construction</b>
<b>C15</b>	<b>Building Construction – General Contractors</b>
<b>C16</b>	<b>Heavy Construction (e.g., highway, pipe laying)</b>
<b>C17</b>	<b>Special Trade Contractors (e.g., plumbing, heating, electrical, carpentry)</b>
<b>D</b>	<b>Manufacturing (production of goods)</b>
<b>E</b>	<b>Transportation, Communication and Sanitary Services (e.g., Delivery services, warehousing, broadcasting and cable systems)</b>
<b>F/G</b>	<b>Wholesale/Retail Goods (e.g., gravel, hospital supplies and equipment, food stores, computer stores, office supplies)</b>
<b>G52</b>	<b>Construction Materials (e.g., lumber, paint, lawn supplies)</b>
<b>H</b>	<b>Financial, Insurance and Real Estate Services</b>
<b>I</b>	<b>Services</b>
<b>I73</b>	<b>Business Services (e.g., copying, advertising, secretarial, janitorial, rental services of equipment, computer programming, security services)</b>
<b>I81</b>	<b>Legal Services</b>
<b>I82</b>	<b>Educational Services (e.g., AIDS education, automobile safety, tutoring, public speaking)</b>
<b>I83</b>	<b>Social Services (e.g., counselors, vocational training, child care)</b>
<b>I87</b>	<b>Engineering, architectural, accounting, research, management and related services</b>



New York State  
**Homes & Community Renewal**  
www.nyshcr.org

**EEOC Statement**

of the

New York State Housing Finance Agency,  
State of New York Mortgage Agency,  
New York State Affordable Housing Corporation,  
State of New York Municipal Bond Bank Agency,  
Tobacco Settlement Financing Corporation and  
Housing Trust Fund Corporation  
(individually, "Agency" and collectively, "Agencies")

It is the goal of the Agencies to ensure compliance with the federal Equal Employment Opportunity Act of 1972, as amended. Respondents with fifteen (15) or more employees responding to this solicitation, must submit a statement disclosing whether the Respondent is currently operating under or negotiating, or has at some time in the last five (5) years operated under or negotiated, a conciliation agreement with the Equal Employment Opportunity Commission ("EEOC"); has been, at some time in the last five (5) years, or is currently the subject of a civil action brought against it by the EEOC; has been, at some time in the last five (5) years, or is currently the subject of an action brought against it by the EEOC for permanent, temporary or preliminary relief; has operated, at some time in the last five (5) years, or is currently operating under an order of a court to take affirmative action as a result of a civil action brought against it by EEOC.

Please answer the above question either in the affirmative or negative.

\_\_\_\_\_ Respond YES or NO.

If YES, provide explanation:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Date of Respondent's Signature

\_\_\_\_\_  
Print Name of Respondent

**HOUSING TRUST FUND CORPORATION  
38-40 STATE STREET, ALBANY, NEW YORK 12207**

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## **APPENDIX IV**

**CONSTRUCTION REQUIREMENTS  
AND PROCEDURES FOR  
CONTRACTS WITH**

**HOUSING TRUST FUND CORPORATION**





New York State  
**Homes & Community Renewal**  
 Office of Fair Housing and Equal Opportunity  
 Web Site: [www.nyshcr.org](http://www.nyshcr.org)

**CUMULATIVE PAYMENT STATEMENT**  
 (Instructions on Reverse Side)

Contractors Name and Address:	Federal ID #	Goals		Reporting Period	
		MBE __%	WBE __%	Quarter	Year
		SHARS/Project #		Work Location	
<i>Name of Firm and Address</i> <small>(List All Firms)</small>	<b>Type of Service Provided</b> <small>(Select only one)</small>	<b>NYS Certified</b> MBE      WBE	<b>Payment</b> <b>This period</b>	<b>Contract</b> <b>Amount</b>	
<b>Federal ID#</b>	<input type="checkbox"/> • Construction <input type="checkbox"/> • Supplier <input type="checkbox"/> • Consultant Service <input type="checkbox"/> • Service/Commodity <input type="checkbox"/> • Section 3	<input type="checkbox"/> <input type="checkbox"/>	<b>No Payment</b> <input type="checkbox"/>		
<b>Federal ID#</b>	<input type="checkbox"/> • Construction <input type="checkbox"/> • Supplier <input type="checkbox"/> • Consultant Service <input type="checkbox"/> • Service/Commodity <input type="checkbox"/> • Section 3	<input type="checkbox"/> <input type="checkbox"/>	<b>No Payment</b> <input type="checkbox"/>		
<b>Federal ID#</b>	<input type="checkbox"/> • Construction <input type="checkbox"/> • Supplier <input type="checkbox"/> • Consultant Service <input type="checkbox"/> • Service/Commodity <input type="checkbox"/> • Section 3	<input type="checkbox"/> <input type="checkbox"/>	<b>No Payment</b> <input type="checkbox"/>		
<b>Federal ID#</b>	<input type="checkbox"/> • Construction <input type="checkbox"/> • Supplier <input type="checkbox"/> • Consultant Service <input type="checkbox"/> • Service/Commodity <input type="checkbox"/> • Section 3	<input type="checkbox"/> <input type="checkbox"/>	<b>No Payment</b> <input type="checkbox"/>		

\_\_\_\_\_  
Signature of Company Official

\_\_\_\_\_  
Print Name of Company Official

\_\_\_\_\_  
Date

**INSTRUCTIONS FOR FILING CUMULATIVE PAYMENT STATEMENT**

This document pertains to **HCR funding only**. The form is to be completed and signed by the Company Official and submitted by **the 10<sup>th</sup> of each quarter**. The form must include **ALL** (e.g. MBE, WBE and non-M/WBE) subcontractors or suppliers assigned to this contract. The Affirmation of Income Payments to MBE/WBE (ADM-146) must accompany this form for each MBE/WBE firm who has received payment.

<b>Quarter</b>	<b>Reporting Period</b>	<b>Due Date</b>
1st	April 1 – June 30	July 10
2nd	July 1- September 30	October 10
3rd	October 1 - December 31	January 10
4th	January 1 – March 31	April 10

- Contractor’s Name & Address:** Indicate name, address, city, state and zip code.
- Contractor’s Federal ID #:** If Federal ID # not assigned, provide Social Security # of the owner.
- Goals:** Indicate HCR’s assigned MBE and WBE participation goals.
- Reporting Period:** Indicate reported month and year.
- SHARS/Project #:** Indicate HCR’s SHARS #/Project #.
- Subcontractor or Supplier Name & Address Federal ID #:** Indicate the name, address, city, state and zip code. If Federal ID # not assigned, provide Social Security # of the owner.
- Description of Work:** Check the box that best describes the work performed. (CHECK ONE BOX ONLY)
- NYS Certified** Indicate if MBE or WBE. (CHECK ONE BOX ONLY) Only firms certified by NYS will be counted towards goals
- Payments This Period:** Indicate amount paid to each subcontractors or suppliers this reporting period.

**NOTE: IF THERE WAS NO PAYMENT THIS PERIOD, PLEASE CHECK THE BOX.**

**Contract Amount:** Indicate total contract amounts or purchase agreement(s) for each subcontractor or supplier.



New York State  
Homes & Community Renewal  
Office of Fair Housing and Equal Opportunity  
Web Site: [www.nysher.org](http://www.nysher.org)

**Affirmation of Income Payments to MBE/WBE**

*Each MBE and WBE FIRM must sign and submit this form to the Contractor. The Contractor/Vendor must submit this form to the Office of Fair Housing and Equal Opportunity by the **10th of each Quarter**.*

**CONTRACTOR**

1. Name and Address of Contractor	2. SHARS/Project #		
Federal ID #	3. Reporting Period		
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="width: 50%; text-align: center;">Quarter</td> <td style="width: 50%; text-align: center;">Year</td> </tr> </table>	Quarter	Year
Quarter	Year		

**M/WBE FIRM**

1. Name and Address	2. Date contract started:
Federal ID #	3. New York State Certified (Check One)
	<input type="checkbox"/> MBE <input type="checkbox"/> WBE
4. Type of Service Provider (Check one box only)	
<input type="checkbox"/> Construction <input type="checkbox"/> Supplier <input type="checkbox"/> Consultant Service <input type="checkbox"/> Service/Commodity	

**5. Summary of Payments**

a. Total MBE/WBE contract amount	\$	
b. MBE/WBE payment received for this reporting period	\$	
c. Total MBE/WBE payments received as of this reporting period	\$	

Signature of MBE/WBE	Print Name of MBE/WBE	Date
Signature of Contractor	Print Name of Contractor	Date

**Failure to submit this form will result in non-compliance.**



**New York State**  
**Homes and Community Renewal**  
*Office of Fair Housing and Equal Opportunity*  
 Website: [www.nyshcr.org](http://www.nyshcr.org)

## MONTHLY EMPLOYMENT UTILIZATION REPORT

(Instructions on Next Page)

<b>Project Name:</b>		<b>Reporting Period:</b>	From: _____ To: _____
<b>Contractor/ Firm Name:</b>		<b>Address:</b>	
<b>Federal ID/SS#:</b>		<b>SHARS #:</b>	<b>Location of Work:</b>
<b>Labor Amount:</b>	\$ _____	<b>Construction Start Date:</b>	<b>Percent of Job Complete:</b> _____

TOTAL NUMBER OF EMPLOYEES FOR THIS REPORTING PERIOD												
Job or Trade Category	Total Number of Employees		Black or African American		Hispanic or Latino		Native Hawaiian or Other Pacific Islander		Native American or Alaskan Native		Asian	
	M	F	M	F	M	F	M	F	M	F	M	F
Professionals												
Technicians												
Office/Clerical												
<b>Construction Trade - List Each</b>												
<b>Grand Totals</b>												

Company Official's Name: \_\_\_\_\_ Title: \_\_\_\_\_

Company Official's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

**NOTE: Failure to submit this form will result in non-compliance.**

### **INSTRUCTIONS FOR FILING MONTHLY EMPLOYMENT UTILIZATION REPORT**

The Monthly Employment Utilization Report (ADM-136) is to be completed and signed by the contractor or subcontractor and **submitted by the 10<sup>th</sup> of each quarter** for the duration of this contract. This report covers all hourly workers, including foremen, supervisors or crew chiefs, journey workers and apprentices or trainees working on the project. Professionals, technicians and office clerical field office staff working on the contract should also be reported.

- Name of Project: Indicate the Name of Assigned Project
- Reporting Period: Indicate reported month and year.
- Contractor or Subcontractor Name: Indicate name, address, city and zip code.
- Federal ID Number: If Federal ID # not assigned, provide Social Security # of the owner.
- Labor Amount: Indicate dollar amount allocated for labor on the Detailed Estimate.
- SHARS Number: Indicate HCR assigned SHARS #.
- Location of Work: Indicate county where project is located.
- Contract Start Date: Indicate date construction actually began.
- Percent of Job Complete: Indicate the estimated percentage of job completed.
- Job or Trade Category: Indicate the total number of employees for the field office staff, including supervisory personnel and administrative staff at the job site. Indicate the number of employees for each construction trade.
- Total Number of Employees: Indicate the total number of **all** employees, regardless of ethnicity, under each trade category for all males (M) and all females (F). **Note: These two columns include the number of employees for the entire workforce.**
- Total Number of Employees Minority & Females: Indicate the total number of employees for each minority group member(s) under each trade category for all minority males (M) and all females (F). **Note: These columns include only the minority workforce.**
- Grand Totals: Total of columns under each trade category for all males (M) and all females (F).

**The company official's name, title and telephone number should be printed or typed at the bottom of the form.**

APPENDIX V

NORTHSTAR CONTRACTING  
GROUP, INC.

SUBCONTRACT  
(TERMS AND CONDITIONS)



No.
-----

**SUBCONTRACT/PURCHASE ORDER**

**AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**BETWEEN:**

**CONTRACTOR:** \_\_\_\_\_ **and** \_\_\_\_\_ **SUBCONTRACTOR**

To perform work at or ship to:

Subject to Requirements for:

- Retainage of \_\_\_\_\_%
- Performance Bond and Payment Bond
- Subcontractor Invoice Due \_\_\_\_\_ of each month

Job/Phase No. _____
Activity Code _____
Vendor No. _____

<b>Description of Work or Materials</b>
All labor, material and equipment is to be provided in strict accordance with the project plans and specifications and includes, but is not limited to, all work required to provide a complete installation.
<b>Subcontractor must name CONTRACTOR AND CONTRACTOR'S client as additional insured on its CGL policy.</b>

**Specifications/Drawings**

Drawings Dated:	_____
Specifications Dated:	_____
Section:	_____
Prepared By:	_____

**Scope of Work:**

<b><u>Item #</u></b>	<b><u>Description</u></b>	<b><u>Units</u> (if applicable)</b>	<b><u>UOM</u> (if applicable)</b>	<b><u>Unit Cost</u> (if applicable)</b>	<b><u>Amount</u></b>

This Subcontract/Purchase Order and the attached Terms and Conditions are accepted as of the day and year first written above.

\_\_\_\_\_  
(Subcontractor)

\_\_\_\_\_  
(Contractor)

By: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
License Number \_\_\_\_\_

By: \_\_\_\_\_  
Name and Title: \_\_\_\_\_

TERMS AND CONDITIONS  
To NorthStar Subcontract/Purchase Order

By signing and returning this Subcontract/Purchase Order, or by partial or complete performance under this Subcontract/Purchase Order, you, as Subcontractor or Supplier (hereinafter "Subcontractor"), agree with Contractor as follows:

1. The terms and obligations of this Subcontract/Purchase Order are a complete and exclusive statement of our agreement and supersede any other document or understanding pertaining to this transaction, unless this provision is expressly waived in writing signed by Contractor on the face of this Subcontract/Purchase Order. Acceptance of this Subcontract/Purchase Order is limited to its terms. This Agreement expressly excludes any and all terms and conditions included on any Subcontractor form, regardless of whether or not the same is executed by Contractor, including without limitation, invoices, daily job tickets, purchase orders, proposals, bids and quotes, whether attached hereto as an exhibit, addendum or otherwise.
2. Subcontractor agrees to be bound to Contractor by the terms of the Agreement for this project between Contractor and the Owner and the Contract Documents thereof, and to assume toward Contractor all the obligations and responsibilities that Contractor by said documents assumes toward the Owner, provided that where any provision of the Contract Documents between the Owner and Contractor is inconsistent with any provision of this Agreement, the provision imposing the higher standard and/or greater burden on the Subcontractor shall govern.
3. Subcontractor shall maintain insurance coverage, including contractual liability, in amounts specified by Contractor, and shall furnish certificate(s) of insurance (in a form acceptable to Contractor) to Contractor before work is begun. Such certificate(s) shall provide that insurance policy(s) may not be changed or cancelled until thirty (30) days after written notice thereof is received by Contractor. Policy(s) renewals shall be provided no later than 30 days prior to the expiration of existing insurance coverage. This Agreement shall not become effective and no work by Subcontractor shall begin until a Certificate of Insurance in accordance with the provisions of this Section 3 is delivered to Contractor by Subcontractor. Provide additional insured coverage and Completed Operations Insurance which shall remain in full force and effect from the date of final completion and acceptance of the project for a period of no less than two years.

Contractor shall be specifically named as an additional insured on Comprehensive General Liability and Automobile Liability insurance policies of Subcontractor on a primary and non-contributing basis in an additional insured endorsement CG201011185 or equivalent and a certificate holder on all insurance coverage required to be maintained by Subcontractor in accordance with this Agreement and the following language shall be included on all insurance certificates:

***RE: Job Name, Job Address***

***[NorthStar Entity Contracted] is included as Additional Insured on a Primary and Non-Contributory basis as respects General Liability, Automobile Liability, and Umbrella Liability as required by written contract. Waiver of Subrogation is included and applies in favor of the Additional Insured as required by written contract."***

Copies of all certificates of insurance naming Contractor as an additional insured will be produced and provided to Contractor before commencement of the work in the form attached hereto and included herein as Exhibit A. No amount shall be payable to Subcontractor under this Subcontract/Purchase Order until and unless Subcontractor evidences to Contractor its compliance with the insurance coverage requirements herein.

To the fullest extent permitted by law Subcontractor shall hold harmless indemnify and defend Owner, Contractor, their directors, officers, employees and agents, from and against any and all claims, damages, liabilities, losses and expenses, including reasonable attorneys' fees, attributable to bodily injury, sickness, disease or death of any person, whomsoever, including Contractor's and Subcontractor's employees, or property damage to any persons or organizations, whatsoever, arising out of or occasioned by, or in any way connected with, the performance of the Work called for by this Subcontract/Purchase Order, regardless of whether or not such claim is based, in whole or in part, upon Contractor's alleged active or passive negligence or participation in the alleged wrong doing or upon any alleged breach of any statutory duty or obligation on the part of the Contractor.



Unless otherwise stipulated in the Contract Documents or in this Subcontract/Purchase Order minimum insurance coverages and their limits shall be as follows:

- (1) Workers' Compensation - Statutory; (2) Employer's Liability - \$1,000,000; (3) Comprehensive General Liability - \$2,000,000 per occurrence and \$2,000,000 in the aggregate, Automobile Liability with combined single limits of \$2,000,000, including coverage for any and all owned, non-owned and hired vehicles used by or at the discretion of Subcontractor in connection with the performance of Subcontractor's work – (not subject to XCU exclusion and coverage including property in the care, custody or control of the Subcontractor) – Waste haulers are to provide Automobile Liability of \$5,000,000 combined single limits when hauling hazardous material with a pollution liability coverage endorsement to the policy and \$2,000,000 combined single limits when hauling non-hazardous material. The limits of liability can be provided by a combination of primary coverage and an excess umbrella policy, which is written on a no less than follow form basis.

Subcontractor waives all rights against Contractor for damages caused by any peril to the extent covered by any form of insurance, suretyship or policy of indemnification provided under the insurance requirements of this Agreement. Subcontractor shall require similar waivers by its Sub-Subcontractors. All insurance policies required hereunder shall permit and recognize such waivers of subrogation.

Contractor shall pay each Subcontractor a just share of any insurance monies received by the Contractor and Subcontractor shall make similar payments to its subcontractors.

4. Subcontractor will send its invoice to Contractor on or before the last day of each month or other specified date or as required on the front of this Subcontract/Purchase Order for Work accomplished during the proceeding period. At Contractor's request, the Subcontractor, prior to or at the time the first monthly statement is submitted, shall furnish a detailed estimate of the percentage of the Contract Price that is likely to be due each month as the Work progresses. This estimate is to be subject to the Contractor's approval and is to be used solely for checking the Subcontractor's monthly statements. Unless otherwise required, invoices must be accompanied by a long form sworn statement, in the manner and form as usually furnished by Contractor, evidencing Subcontractor's own waiver of all claims and supporting waivers and affidavits from its subcontractors and suppliers. The determination of the Contractor not to require such statements and other documents, or any portion thereof, with respect to any payment or payments shall not constitute a waiver of the Contractor's right to require the same with respect to any succeeding payments. Requested revisions to Subcontractor's Contract Price are not to be included in its billings until Subcontractor receives Contractor's signed Change Order. Authorized changes must be shown, but not billed separately and are to be added to or deducted from the Contract Price. The final billing for retention shall be made on a separate invoice and shall be accompanied by a final waiver in the full amount of the Contract Price, including revisions. Subcontractor's billing shall be presented via AIA G702/G703 or similar format.
5. All "costs plus" billings must be completely detailed as to labor, equipment, material, and subcontract charges and must be supported by copies of material and Subcontractor's invoices and by signed tickets for labor, material and equipment charges.
6. Upon written approval by Contractor and the Owner, Subcontractor's invoice shall be paid, in the net amount of its request, if and only if, Contractor receives payment from the Owner for said invoice. Contractor's receipt of payment from Owner for Subcontractor's invoice is an express condition precedent to Contractor's obligation to make payment to Subcontractor. If Contractor does not receive payment from the Owner for said invoice, notwithstanding whether same was approved, the Contractor shall have no further obligation to pay Subcontractor. If Contractor has withheld retention, same shall be paid to the Subcontractor after approval and acceptance of the entire project by the Owner. Subcontractor's acknowledges its payment is contingent upon the Owner paying the Contractor.
7. Subcontractor hereby guarantees the good quality of the workmanship and materials being supplied by it under this Subcontract/Purchase Order, and if any defect therein appears within one (1) year after issue of the Certificate of Substantial Completion because of faulty workmanship or materials supplied by Subcontractor under this Subcontract, Subcontractor will replace or repair such faulty workmanship or materials without additional charge to Contractor. Further guarantees, bonds or the like, required by the Contract Documents shall also be furnished by the Subcontractor with its final billing.

8. Subcontractor shall keep the construction site and surrounding premises clean at all times of debris arising out of its operations. Should Subcontractor fail to do so in a timely manner, Contractor shall cause this work to be done by others and deduct any costs and expenses from Subcontractor's Contract Price.
9. Subcontractor shall comply with all applicable local, state and federal safety requirements and with all safety regulations established by Contractor. Subcontractor shall report immediately to Contractor any injuries suffered by its employees or any injuries to other persons or property damage arising out of its operations. The Contractor shall be furnished a copy of the accident report within twenty four (24) hours of any injury or damage.
10. Subcontractor shall make all changes from the original plans and specifications when ordered to do so by Contractor without nullifying the original Subcontract/Purchase Order, and shall promptly submit to Contractor its Change Order proposal before performing these changes. The actual amount of the increase or decrease in the Contract Sum and/or Contract Time resulting from a change approved by written change order shall be determined by one of the following methods, at Contractor's sole and exclusive discretion: (a) if possible, mutual acceptance of a lump sum proposal properly itemized and supported by sufficient substantiating data to permit evaluation and audit by Contractor; (b) unit prices stated in the Contract Documents, the applicable bid proposals, or subsequently agreed upon by the parties; and or (c) the actual cost to the Subcontractor and any of its subcontractors, which cost must be properly itemized and supported by sufficient substantiating data to permit evaluation and audit by Contractor. No work shall be performed without prior written authorization from the Contractor.
11. If required, Subcontractor shall furnish, at Subcontractor's sole expense, a performance and payment bond in the form and amount and with the sureties acceptable to Contractor.
12. It is agreed that should Contractor's contract for the project, or the project concerning which this Subcontract/Purchase Order is written, be terminated or the progress of the Work delayed due to conditions which Contractor cannot control, Contractor may terminate this Subcontract/Purchase Order without any liability to the Subcontractor, and the Subcontractor will be entitled to payment for its Work in the amount valued for its Work in the Contractor's final settlement which shall be Subcontractor's sole and exclusive remedy. The Subcontractor expressly agrees not to make, and hereby waives, any claim for damages on account of any delay, obstruction or hindrance for any cause whatsoever, including but not limited to the aforesaid causes, and agrees that its sole right and remedy in the case of any delay, obstruction or hindrance shall be an extension of the time fixed for completion of the Work. If the Subcontractor shall delay the Work and as a result thereof the Contractor shall become liable for damages or shall incur additional costs and expenses, the Subcontractor shall indemnify the Contractor and the Owner on account of any such damages, including without limitation, liquidated, incidental, indirect and consequential damages, and additional costs and expenses.
13. Subcontractor shall pay all sales taxes, use taxes, occupational taxes, excise taxes, payroll taxes, unemployment taxes, custom duties, demurrage charges, container rentals as well as any other tax or levy applicable to this Subcontract/Purchase Order, except to the extent that Contractor has the right to extend and does extend any tax benefits received by it from the Owner to Subcontractor.
14. Subcontractor shall complete his Work in accordance with the Contract Documents and in a manner satisfactory to Contractor, Owner and its duly authorized representative, and shall keep the property supplied or upon which Work is performed, free of any claim or charge from others because of his actions. If at any time there shall be evidence of any claim, lien, chattel mortgage, conditional bill of sale or security interest for which, if established, the Owner and/or Contractor might become liable and which in any way relates to, or arises out of the Work, or is claimed in any way to relate to, or arise out of the Work, the Contractor shall have the right to retain out of any payments then due or thereafter to become due, an amount sufficient to completely indemnify and protect the Contractor and Owner against such lien, claim, chattel mortgage, conditional bill of sale or security interest. In the event that any such lien, claim, chattel mortgage, conditional bill of sale or security interest shall be filed, the Subcontractor shall promptly remove or discharge it by bonding, payment or otherwise; and if the Subcontractor shall fail to so remove or discharge the same within five (5) days after notice from the Contractor, the Contractor shall, in addition to its rights under the preceding paragraph, have the right to remove or discharge the same by bonding, payment or otherwise, in its sole discretion, for the account of the Subcontractor. The amount of any payment, costs and expenses made or incurred by the Contractor in connection with the removal or discharge of any such lien, claim, chattel mortgage, conditional bill of sale or security interest, as aforesaid, may be deducted by the Contractor from any payments or amounts then due or thereafter to become due to the Subcontractor or retained by the Contractor as aforesaid, under this or any other agreement between Contractor and Subcontractor. If any amount retained by the Contractor, or any payment or

payments due the Subcontractor and unpaid shall not be sufficient to remove or discharge any such lien, claim, chattel mortgage, conditional bill of sale or security interest and/or to reimburse the Contractor its costs and expenses in connection therewith, or if the Subcontractor shall have been fully paid, the Subcontractor shall pay to Contractor on demand the amount required to satisfy such lien, claim, chattel mortgage, conditional bill of sale or security of interest, and the Contractor's costs and expenses in connection therewith.

15. Subcontractor shall assume all risks and liability for damage or loss to all materials, tools or equipment not incorporated in the Work which belong to it or are under its control.
16. Subcontractor shall cooperate with Contractor and other subcontractors in the scheduling and performance of the Work. Subcontractor shall commence the Work upon notification from Contractor, and will proceed towards completion in accordance with the schedule established by Contractor. Should Subcontractor fail to pursue or complete the Work in accordance with the schedule established by Contractor, Subcontractor hereby agrees to indemnify Contractor for any loss or damage, including without limitation, liquidated, incidental, indirect and consequential damages caused by such delay.
17. All claims for additional costs shall be submitted to the Contractor within three (3) days of the basis for the claim becoming apparent, or as otherwise required so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor. Any claim not timely submitted as required herein shall be deemed waived by the Subcontractor. Subcontractor represents that, prior to submitting its bid or executing this Agreement, Subcontractor has visited the site to ascertain the nature and location of the Work, character and accessibility of the site, available facilities, location and character of existing work in or adjacent to the site, and all other general and local conditions including labor which might affect the Work or the cost thereof. No extra payments shall be allowed for claims for additional work that could have been determined or anticipated by a proper and careful examination of the site.
18. Subcontractor shall take all field measurements, furnish all the required samples and drawings, comply with all governmental laws and decrees, give authorities timely and proper notices where required, secure and pay for all necessary permits, licenses, inspections, tests, and bonds required for the Work covered by this Subcontract/Purchase Order.
19. Subcontractor agrees that all Work shall be accomplished subject to the final approval of Contractor, the Owner, and its authorized representative, and their decision in matters relating to artistic effect shall be final.
20. Subcontractor shall have and exercise full responsibility for compliance hereunder by its agents, employees, materialmen, and subcontractors generally, and in particular, with respect to its portion of the Work on this project, shall itself comply with said requirements, standards and regulations and require and be directly responsible for compliance therewith on the part of its said agents, employees, materialmen and contractors, and shall directly receive, respond to, defend against and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of its failure on the part of its agents, employees, materialmen or subcontractors to so comply and indemnify and hold harmless Contractor from its failure to comply with the foregoing.
21. (a) In addition to all other rights or remedies which the Contractor may have at law or in equity, the Contractor reserves the right to terminate this Agreement in whole or in part, after giving three (3) days written notice to the Subcontractor without cost or expense to the Contractor, in the event of the happening of any of the following which shall be deemed occasions of default by the Subcontractor: failure to perform the Work in accordance with the completion date or dates specified and implied in this Agreement; failure in any respect to execute the Work with promptness and diligence; breach of any of the warranties contained herein; failure to pay promptly for labor, materials, machinery, equipment, tools, plants, facilities, work, services or any of its other obligations; interference with the work of others or causing stoppages or delays; insolvency; the execution of an assignment for the benefit of creditors; the filing of proceedings in bankruptcy or for corporate reorganization or arrangement by or against the Subcontractor or its assets; liquidation proceedings instituted by or against the Subcontractor; failure to strictly comply with the terms and conditions of this Agreement. In the event of such termination, Contractor may provide through itself or through others any labor, materials, equipment, machinery, tools, plant facilities and services for the performance of the Work and completion of this Agreement, and deduct the cost and expense thereof or from any money due or thereafter to become due to the Subcontractor. Should the Contractor terminate this Agreement, the Subcontractor shall not be entitled to receive any further payment under this Agreement until the Work shall be wholly finished, at which time, if the unpaid balance of the amount due the Subcontractor shall exceed the cost and

expense incurred by the Contractor in completing this Agreement, such excess shall be paid by the Contractor to the Subcontractor; but if such cost and expense shall exceed such unpaid balance, then the Subcontractor shall pay the difference to the Contractor. The cost and expense incurred by the Contractor shall include all costs of completing the Work, all payments for labor, materials, equipment, machinery, tools, plant facilities, services, all other obligations of the Subcontractor incurred by the Subcontractor, and paid directly by the contractor, any damages incurred through the default of the Subcontractor and also any other costs or expenses incurred by the Contractor, including but not limited to, legal fees and disbursements.

(b) In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Agreement, the Contractor may terminate this Contract and the rights of the Subcontractor hereunder without cause at any time upon three (3) days written notice to the Subcontractor and in such event this Agreement shall cease and expire on the date set forth in the notice of termination as fully and completely as though such date were the original expiration date hereof, the amount due to the Subcontractor from the Contractor shall be based solely upon the percentage of Work completed by the Subcontractor. The Subcontractor expressly agrees not to make, and hereby waives, any claim for damages on account of such termination and agrees that its sole right and remedy shall be payment for the percentage of Work completed by Subcontractor.

(c) In the event the Subcontractor is terminated pursuant to subparagraph a) above, and it is determined that said termination was wrongful then the parties agree that said termination shall be deemed to be a termination pursuant to subparagraph b) above.

22. At the Contractor's request, the Subcontractor shall furnish detail or other design drawings for the Work for the Contractor's approval. Approval of any design drawing, or manufacturers' drawings by the Contractor shall not relieve the Subcontractor of any responsibility for execution of the Work in accordance with the terms, provisions and conditions of this Agreement.
23. All documents furnished by the Contractor or by the Subcontractor at Contractor's request, including but not limited to drawings, plans, blueprints, specifications, patterns, technical designs, instructions, calculations, etc., and all copies of reproductions thereof, shall remain the Contractor's property, and the Subcontractor agree not to sell or give such documents to any person, firm or corporation or use them on other projects without the Contractor's prior written consent.
24. The Subcontractor shall treat as confidential all data and information furnished by the Contractor which may be of a secret or confidential nature, and the Subcontractor shall not knowingly divulge the same to third parties without the Contractor's prior written consent until such data and information has become public knowledge.
25. All claims, disputes and other matters in question between the parties hereto shall be decided by a court of proper jurisdiction located in the county where the project is located and the laws of that State shall govern. Notwithstanding the foregoing sentence, all claims, disputes and other matters in question between the Contractor and the Subcontractor arising out of, or relating to this Agreement, the Project, the Work, the Contract Documents or the breach thereof may, at the Contractor's sole option, and only upon the exercise of that sole option by the Contractor, together or separately as the Contractor sees fit, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The prevailing party in any such litigation or arbitration shall be entitled to recover reasonable attorney's fees, costs and expenses incurred in litigating or arbitrating the dispute.
26. The Subcontractor shall not assign the Work of this Subcontract/Purchase Order without the prior written consent of the Contractor, nor subcontract the whole of this Subcontract/Purchase Order without the prior written consent of the Contractor, nor further subcontract portions of this Subcontract/Purchase Order without the prior written notification to the Contractor when such notification is requested by the Contractor.
27. Contractor has the right of set off against sums due to Subcontractor under the provisions of this Agreement or under any other agreement between Contractor and Subcontractor against any obligation whatsoever that may be due from Subcontractor or its affiliates to Contractor regardless of the source of said obligation, whether arising under this Agreement or otherwise.
28. If any provision of this Agreement is unenforceable or contrary to the public policy of the State where the project is located, the court making such determination shall have the power to, and shall, modify same to the minimum extent necessary to make such provision, as so modified enforceable, and such provision shall then be applicable in such modified form. All other provisions of this Agreement shall remain in full force and effect.

29. Each and every provision of law required by law to be inserted in this Agreement shall be deemed inserted herein, and this Agreement shall be read and enforced as though any such required provision were included verbatim herein, and if through mistake or otherwise any such provision is not inserted, or is incorrectly inserted, then upon application of either Party this Agreement shall forthwith be physically amended to make such insertion or correction.

30. Site Investigation and Conditions Affecting the Work. (a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to

- (1) conditions bearing upon transportation, disposal, handling, and storage of materials;
- (2) the availability of labor, water, electric power, and roads;
- (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- (4) the conformation and conditions of the ground; and
- (5) the character of equipment and facilities needed preliminary to and during work performance.

The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the NorthStar Contracting Group, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The NorthStar Contracting Group, assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the NorthStar Contracting Group. Nor does the NorthStar Contracting Group, assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

31. The following Additional Provisions, Terms and Conditions and Clauses are incorporated by reference with the same full force and effect as if they were incorporated by full text. Full copies of these documents can be obtained from NCG by written notice.

- a) Appendix I, HUD General Provisions of 30 articles;
- b) Appendix II, Standard Clauses for Contracts with the New York State Housing Financing Agency, State of New York Mortgage Agency, New York State Affordable Municipal Bond Bank Agency, Tobacco Settlement Financing Corporation, Housing Trust Fund Corporation (HTFC)

32. Order of Precedence- This subcontract agreement and all attachments, appendices, exhibits, hereto, and all referenced documents, constitute the entire agreement between the parties with respect to the matters herein, and integrates, merges, and supersedes all prior negotiations, representations, or agreements relating thereto, whether written or oral, except to the extent they are expressly incorporated herein. The provisions of this subcontract agreement and the accompanying documents shall be construed and interpreted as consistent as whenever possible. Unless otherwise stated elsewhere in this agreement, any conflicts in this agreement and the accompanying documents shall be resolved in accordance with the descending order of precedence.

- a) Appendix I- HUD General Provisions
- b) Appendix II- Standard Clause for all HTFC Contracts
- c) Appendix III- Diversity Forms
- d) Appendix IV- Construction Related Terms and Forms
- e) Appendix V – This agreement
- f) Exhibit A- Scope of Services
- g) Exhibit B - Price Proposal
- h) Exhibit D- WMBE Participation Matrix

- i) Exhibit E-Wage Determinations
- j) Proposal Documents

33. Standardization of terms in Additional provisions, Terms and Conditions, and clauses. Where applicable in Appendix I- HUD General Provisions, The phrase “The State” shall include the NorthStar Contracting Group Inc. (NCG). The term “Contractor” shall mean “Subcontractor” under this agreement. Where applicable in Appendix II- Standard Clauses for Contracts with HTFC, the term “Contractor” shall mean “Subcontractor” under this agreement. The term “Contract” shall mean this subcontract agreement. The Terms, “Agency or Agencies” shall include NCG. Appendix II- Diversity Forms. The term “Contractor” shall mean Subcontractor under this agreement.
34. Submission requirements- Any submission requirements required in any documents in Appendix I, II, III and IV shall also include a duplicate submission to NCG with the same compliance requirements of completeness and timeliness as required in the provision, document, term or condition and clause as directed.
35. Substantial / Final Completion (85% Payment) (Applicable to Demolition Subcontracts Only) - The following provides information and checklist required for substantial completion payment. All documents and information shall be provided to NCG before the invoice can be processed. Failure to meet any of the requirements or provide any of the documents noted herein shall have the submitted invoice denied and returned for resubmittal.

*Documents required:*

- i. Substantial completion checklist completed
- ii. Signed memorandum from NCG with each invoice of parcels
- iii. Signed partial lien waiver from demolition contractor

NCG will review all files for substantial completion and complete the Substantial Completion Checklist. Once this checklist has been completed and all requirements have been met, NCG will submit a signed memorandum with every invoice, certifying that demolition activities for each specific parcel identified in that invoice is substantially complete.

Once all properties in contract are 85% complete, demolition contractors will sign and submit a substantial completion notice to be placed in all corresponding parcel files.

36. Substantial completion notice Final Completion (15% Payment) (Applicable to Demolition Subcontracts Only) - The following provides information and checklist required for substantial completion payment. All documents and information shall be provided to NCG before the invoice can be processed. Failure to meet any of the requirements or provide any of the documents noted herein shall have the submitted invoice denied and returned for resubmittal

*Documents required:*

- i. Final completion notice
- ii. GOSR demolition checklist completed with NCG
- iii. Signed final lien waiver from demolition contractor

NCG will review all demolition parcel files for final completion and complete the GOSR Demolition Checklist with Contractor. Once this checklist has been completed and reviewed for all applicable items associated with each specific property, NCG will submit a signed memorandum with every contractor invoice to GOSR. This will certify that all demolition activities and requirements for each specific parcel identified in that invoice are 100% complete and all documentation has been accounted for. Once all properties in contract are 100% complete, contractor will sign and submit a final completion notice to be placed in all files.

37. HTFC Submission Process (Applicable to Demolition Subcontracts Only) - This information is provided to assist the Contractor in understanding the invoice and payment process under this subcontract. On behalf of contractor, NCG will submit partial payment invoices on a monthly basis, once 85% of each parcel has been demolished and a memorandum has been signed off by NCG. Jacobs Civil Consultants Inc will review certified payroll documents for NCG. Once documents are reviewed and approved by Jacobs (typically 2 days), NCG will submit the invoice

directly to the HTFC email address, which will enter the invoice into the HTFC invoicing system, marking the start of the review period for GOSR Finance.

*Sample*

ABC Construction Invoice #001\_05.04.2015 -The contractor will first prepare a demolition invoice package for a detailed review by NCG. The demolition invoice package will be sent electronically by the last Friday of each month. The demolition invoice package will include the following:

1. Invoice cover letter on NCG's letterhead.
2. AIA G702 Application and Certificate of Payment
3. AIA G703 Continuation Sheet
4. Contractor's Partial Release and Waiver of Mechanics' and Suppliers' Lien (partial / final lien waiver)
5. Proc-5. Workforce Employment Utilization
6. Proc-6. M/WBE Quarterly Report
7. Certified payrolls for the invoice period on a US Department of Labor WHD form.
8. Before and after photos of each parcel, labeled with the property address and parcel identification numbers.

On a separate email, NCG will provide a memo for each invoice certifying that NCG has managed the demolition of each parcel and certify that all work is approved for payment. One memo is required for each invoice submitted. NCG will send to GOSR Program Manager for review. Once approved, NCG will submit the invoice to the HTFC Invoicing System and GOSR Program Manager will send memo to GOSR Finance. Once the additional 15% has been completed, the final invoice can be submitted according to the same standards for the final 15% payment of each property completed.